1855.

SUPREME COURT OF THE UNITED STATES.

No. 153.

ROBINSON LYTLE AND AL., PLAINTIFFS IN ERROR,

vs.

THE STATE OF ARKANSAS, WILLIAM RUSSELL, AND AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

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J. & G. S. Gideon, Printers.

THE UNITED STATES OF AMERICA,
District of Arkansas, ss:

The President of the United States, to the honorable the supreme court
[L. S.] of the State of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment and decree, in a certain cause in equity, which is in the said supreme court, before you, the judges thereof, between Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H Cloyes, a minor, by his guardian and next friend, Wiley Clayton, complainants and appellants, and The State of Arkansas, William Russel, and Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, junior, Anthony H. Davies, Sanford C. Faulkner, Silas Craig, George Hill, Enock J. Smith, James H. Walker, and John Drennen, as surviving trustees and assignees of the Real Estate Bank of the State of Arkansas, and Richard C. Byrd, William P. Officer, Ebenezer Walters, John Wassell, John W. Cocke, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, and John Morrison and Edny Morrison, his wife, defendants and appellees, a manifest error has happened, to the great damage of the said Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, who sues by his guardian, Wiley Clayton, complainants and appellants as aforesaid, as by their complaint it appears. And it being proper that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we do command you, if judgment and decree be therein given, that then, under the seal of said supreme court, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court of the United States, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein, to correct that error, what of right and according to the laws of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twenty-ninth day of July, in the year of our Lord one thousand eight hundred and forty-seven.

In witness whereof I, William Field, clerk of the circuit court of the United States for the district of Arkansas, have hereunto set my hand as such, and affixed the seal of said circuit court, at office, in Little Rock, in said district, the day and year last aforesaid.

WM. FIELD, *Clerk.*
By A. H. RUTHERFORD,
Deputy clerk.

1050.

Clerk's fees for this writ, $2 00; and the same paid by Col. A. Fowler.

Allowed by THOMAS JOHNSON,
Chief justice of the supreme court of the State of Arkansas.

STATE OF ARKANSAS,
In the supreme court, sct:

I, Luke E. Barber, clerk of the supreme court of said State, do hereby certify, that, in obedience to the mandate of the within and foregoing writ of error, and the allowance thereof by the hon. Thomas Johnson, chief justice of said supreme court, I have made out and certified a full, true, and complete transcript, (except as in the certificate thereof is excepted,) of the record and proceedings of said supreme court, in the case in said writ of error, which is hereto attached, and now openly sent to the Supreme Court of the United States, as by said writ it is commanded.

In testimony whereof I have hereto set my hand and affixed the seal of said court, at my office in the city of Little Rock, in said [SEAL.] State, this 21st day of August, in the year eighteen hundred and forty-seven.

L. E. BARBER,
Clerk sup. court Arkansas.

THE STATE OF ARKANSAS,
In the supreme court, sct:

Be it remembered that, at a supreme court of the State of Arkansas, begun and held at the court-house, in the city of Little Rock, on the first Monday, being the 5th day of July, in the year of our Lord one thousand eight hundred and forty-seven, and on the 8th day of July, before the hon. Thomas Johnson, chief justice, the hon. Williamson S. Oldham, judge, and the hon. Richard C. S. Brown, special judge, were the following proceedings, to wit:

Appeal from Pulaski circuit court, in chancery.

ROBINSON LYTLE and Lydia L. Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, Nathan H. Cloyes, a minor, under the age of twenty-one years, by Wiley Clayton, his guardian, appellants,

vs.

The State of Arkansas, William Russell, and Sam. C. Roane, Ebenezer Walter, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, jr., Anthony H. Davies, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, and John Drennen, as surviving trustees or assignees of the Real Estate Bank of the State of Arkansas, and Richard C. Byrd, William P. Officer, Ebenezer

Walters, John Wassell, John W. Cocke, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Jacob Mitchell, Henry F. Pendleton, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, and John Morrison and Edney, his wife, survivors of the Real Estate Bank of the State of Arkansas, James Pitcher, and Thomas S. Reynolds, appellees.

Be it remembered that, heretofore, to wit, on the thirteenth day of December, in the year eighteen hundred and forty-four, the said appellants, by Absalom Fowler, their solicitor, filed in the office of the clerk of said supreme court the transcript of the record of the circuit court of Pulaski county, in chancery, in said cause; which is in the words and figures following, to wit:

Transcript of circuit court.

Pleas had before the honorable John C. P. Tollison, special judge of the Pulaski circuit court, in chancery sitting, on the 3d day of July, in the year of our Lord one thousand eight hundred and forty-four, in the following entitled case, to wit:

ROBINSON LYTLE and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, Nathan H. Cloyes, a minor, under twenty-one years of age, by Wiley Clayton, his guardian,

vs.

THE STATE OF ARKANSAS, William Russell, the Real Estate Bank of the State of Arkansas, the Trustees of said Real Estate Bank aforesaid, Richard C. Byrd, James Pitcher, Wm. P. Officer, Ebenezer Walters, John Wassell, John W. Cocke, Frederick W. Trapnall, George C. Watkins, Saml. H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, Wm. E. Woodruff, Chester Ashley, Wm. J. Byrd, Wm. W. Daniel, John Morrison and Edney, his wife.

Bill.

To the honorable John J. Clendenin, judge of the circuit court of Pulaski county. In chancery:

Complaining, show unto your honor your orators, Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor, under twenty-one years of

age, by Wiley Clayton, his guardian, that they, the said Lydia Louisa, Mary E., and Nathan H., are the legitimate children, and heirs and only heirs at law, of Nathan Cloyes, deceased, late of the said county of Pulaski, in the then Territory, now State, of Arkansas.

That the said Nathan Cloyes in his lifetime, by virtue of an act of the Congress of the United States of America, entitled "An act to grant pre-emption rights to settlers on the public lands," approved May the 29th, 1830, as a settler and occupant of the public lands, to wit, on and of the northwest fractional quarter of section numbered two, in township numbered one north, of range numbered twelve west, in said county of Pulaski, prior to the passage of that act, being then in possession thereof, and having cultivated some part thereof in the year one thousand eight hundred and twenty nine, was and became thereby authorized and entitled to enter with the register of the land office for the district in which said fractional quarter of said section of land lay, by legal subdivision any number of acres, not more than one hundred and sixty or a quarter section, to include his improvement, upon paying to the United States the then minimum price of said land, provided such land should not have been reserved for the use of the United States, or either of the several States in which any of the public lands might be situated, or reserved from sale by act of Congress, or by order of the President, or appropriated for any purpose whatever. That being so authorized and entitled by said act of Congress, the said Nathan Cloyes, in his lifetime, on the twenty-third day of April, A. D. 1831, and whilst the said act was in full force, at the land office in Batesville, in said State of Arkansas, which was then the land office in and for the district in which said fractional quarter section of land was then situated, by his own affidavit, and by the affidavits and evidence of John Saylor, Nathan Maynor, and Elliot Bursey, made proof of his settlement on, and improvement on and of the said fractional quarter section of land, and of his right to a pre-emption thereof, according to the provisions of said act, to the satisfaction of the register and receiver of said land district, agreeably to the rules prescribed by the Commissioner of the General Land Office for that purpose; and on the 28th day of May, A. D. 1831, the said act of Congress being then still in full force, Hartwell Boswell, the register, and John Redman, the receiver of said land district, granted to the said Nathan Cloyes, then still living, the privilege of entering the said land upon which he had so established his right; which will more fully appear by reference to a duly certified copy of said affidavits, proof, and endorsement of approval, which is herewith filed, and marked exhibit A, and prayed to be taken as a part of this bill of complaint, the original whereof remains on file with the register of the land office at Little Rock, in said State, in his office, to which land office last mentioned it was duly transferred by virtue of an act of Congress. That after having made such proof as aforesaid of his settlement and improvement on the said quarter section of land, to the satisfaction of said register and receiver, and they having so granted and allowed the privilege of entering the same as aforesaid, the said Nathan

Cloyes, then and there, on the said 28th day of May, A. D. 1831, made application to the said register of the land office at Batesville, to enter the said northwest fractional quarter of section two, in township one north, of range twelve west, containing thirty acres and eighty-eight hundredths of an acre; and also the northeast fractional quarter of the same section, containing forty-two acres and thirty-two hundredths of an acre; and also the northwest and northeast fractional quarters of section numbered one, in the same township and range, containing thirty-five acres and forty-one hundredths of an acre, the said fractional quarter sections containing together one hundred and eight acres and sixty-one hundredths of an acre, and in legal subdivisions; and then and there offered to pay the said United States, and tendered to the said receiver the minimum price for said land, to wit, the sum of one hundred and thirty-five dollars and seventy-six and one-fourth cents; which said fractional quarter sections of land were not reserved at that time or previously for the use of the United States, or either of the several States in which any of the public lands were situated, nor were said lands reserved from sale by act of Congress, or by order of the President, or appropriated for any purpose whatever; but the said register refused to permit the said Nathan to enter said land, and the said receiver refused to receive the payment so tendered therefor, because they allege the said Nathan could only enter the fractional quarter section aforesaid upon which he had settled and made his improvement as aforesaid, and because the public surveys of said four fractional quarter sections of land, which were all contiguous, had not been returned according to law; that in fact said fractional quarter sections of land were and are contiguous to each other, and the public surveys thereof had not then been made, perfected, and returned.

That by virtue of an act of Congress, entitled "An act establishing land districts in the Territory of Arkansas," approved June 25th, 1832, the said fractional quarter sections of land were transferred to and made a part of the Arkansas land district, the land office for which was located at Little Rock; and afterwards in pursuance of law, the papers and evidence relating to said pre-emption right, filed in the land office at Batesville, were duly transferred to and filed in the said land office at Little Rock.

That afterwards, by virtue of an act of Congress, entitled "An act granting to the Territory of Arkansas one thousand acres of land, for the erection of a court-house and jail at Little Rock," approved June the 15th, A. D. 1832; and of an act, entitled "An act to authorize the Governor of the Territory of Arkansas to sell the land granted to said territory by an act of Congress approved the fifteenth of June, one thousand eight hundred and thirty-two, and for other purposes," approved March 2d, A. D. 1833, John Pope, then governor of said territory, selected illegally and by mistake, for the benefit of said territory, among other lands, the said northwest fractional quarter of section, numbered two aforesaid, containing thirty acres and eighty-eight hundredths of an acre, and for which, as your orators are informed, a pa-

tent was afterwards issued to the said Governor of said Territory of Arkansas, and his successors in office, in trust for the benefit of said Territory, for the purpose of erecting a court-house and jail at Little Rock. That the said John Pope, as such governor, afterwards, by virtue of, or under pretence of an act of Congress, entitled "An act granting a quantity of land to the Territory of Arkansas, for the erection of a public building at the seat of government of said territory," approved March 2d, A. D. 1831; and an act, entitled "An act to authorize the Governor of the Territory of Arkansas to select ten sections of land granted to said territory for the purpose of building a legislative house for said territory, and for other purposes," approved July 4th, 1842, selected the said northeast fractional quarter of section two, and the said northwest fractional quarter and northeast fractional quarter of section one, as unappropriated lands, for the purpose of raising a fund for the erection of a public building at Little Rock, and having assigned the same to one William Russell, a patent was issued therefor to the said William Russell, on or about the 21st day of May, A. D. 1834; both of which said patents your orators allege were issued in mistake and violation of law, and in fraud of the legal and vested rights of the said Nathan Cloyes, and of your orators. That after the application of the said Nathan Cloyes to enter the said lands, and after his tender of payment therefor had been refused as aforesaid, an act of Congress, entitled "An act supplemental to the act granting the right of pre-emption to settlers on the public lands, approved the twenty-ninth day of May, eighteen hundred and thirty," was approved on the 14th day of July, A.D. 1832, authorizing settlers upon the public lands, entitled to a pre-emption under the said act, approved the 29th day of May, A. D. 1830, and who had not been enabled to enter the same within the time therein limited, in consequence of the public surveys not having been made and returned, to enter said lands on the same condition in every respect as prescribed in said act within one year after the surveys should be made, and the occupants upon fractions in like manner to enter the same, so as not to exceed in quantity one quarter section, which said last mentioned act was approved and in full force before the said Governor Pope selected said lands as aforesaid, and that the public surveys of said fractional quarter sections were made and perfected on or about the first day of December, A. D. 1833, and returned to the land office in the beginning of the year 1834; by virtue of which two last mentioned acts, the said Nathan Cloyes having in the mean time departed this life, the the said Lydia Louisa, Mary E., Nathan H., and their brother William Thomas Cloyes, heirs of the said Nathan Cloyes, deceased, applied to enter the said four fractional quarter sections of land by virtue of said pre-emption right; and on the fifth day of March, A. D. 1834, and within one year after said surveys were made, at the receiver's office at Little Rock, by the hands of Ben Desha, they paid to Peter T. Crutchfield, receiver at Little Rock, the sum of one hundred and thirty-five dollars and seventy-six and one-fourth cents, for the said northwest and northeast fractional quarter of section two, and the northwest and the

northeast fractional quarters of said section one, in said fractional township one, north of the base line, and range twelve, west of the fifth principal meridian, containing in all one hundred and eight acres and sixty-one hundredths of an acre, at one dollar and twenty-five cents per acre; and the said receiver then and there granted a receipt and certificate thereof to the said heirs, numbered 663, and endorsed thereon as such receiver, that a part of the land for which said receipt was given, to wit, the northwest fractional quarter of section two, was a part of the location made by Governor Pope in selecting 1000 acres, adjoining the town of Little Rock, granted by Congress to raise a fund for building a court-house and jail for said territory, and that that endorsement was made by direction of the Commissioner of the General Land Office; which said receipt and certificate, with the said endorsement thereon, is held subject to the order of this honorable court and the inspection of parties, and a true copy of the same is herewith filed, marked exhibit B, and prayed to be taken as a part of this bill of complaint.

That the register of said land office refused to permit your orators to enter said fractional quarter sections of land; that since the granting of said certificate the said William Thomas Cloyes has departed this life, without issue, leaving the said Lydia Louisa, Mary E., and Nathan H., his sole and exclusive heirs at law.

That the patentees in both of said patents, at the time of their application to enter said lands, and before and at all times afterwards, had notice, both constructive and actual, of the vested right therein and thereto of the said Nathan Cloyes, deceased, and of your orators, and in equity and law received such patents subject to the prior rights and equity of your orators. That since the issuance of the said patents by the constitution of the said State of Arkansas, adopted in convention on the 30th day of January, A. D. 1836, and the laws enacted in pursuance thereof, all right, title, interest, and claim of the said territory of Arkansas, in and to said lands, vested in and accrued to said State, which said State of Arkansas and the said William Russell, your orators pray may be made defendants to this their bill of complaint. That your orators are informed that the following named persons and corporations have become purchasers, and claim to be the owners of parts and portions of said lands, to wit: the Real Estate Bank of the State of Arkansas; the trustees or assignees of said bank, Sam. C. Roane, of Jefferson county; Ebenezer Walters and Lambert Reardon, of Pulaski county; Henry L. Biscoe, William F. Moore, and John Preston, junior, of Philips county; Anthony H. Davies, Sandford C. Faulkner, and Silas Craig, of Chicot county; George Hill, Enoch J. Smith, and James H. Walker, of Hempstead county; Lorenzo N. Clark, of Johnson county; John Drennen and Robert S. Gibson, of Crawford county; Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, Charles P. Bertrand, John Wassell, John W. Cocke, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, and John Percefield, of Pulaski county; James S. Conway, of Hot Springs county; Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds,

John H. Leech, William E. Woodruff, Chester Ashley, and William J. Byrd, of Pulaski county; William W. Daniel, and John Morrison and Edney, his wife, of Jefferson county; all of whom your orators pray may be made defendants hereto; and your orators allege and aver, that all of said defendants both purchased and received titles to said land, or part thereof, with full knowledge of your orators' prior, equitable, and vested right therein, and are purchasers, with full notice in fact as well as in law, of the prior and vested right of your orators in and to said lands as above set forth, and purchased subject to your orators' superior right in equity. But now, so it is, may it please your honor, that the said defendants, combining and confederating together, to and with divers other persons as yet unknown to your orators, (but whose names, when discovered, your orators pray may be inserted herein as defendants to this suit, with proper words to charge them with the premises,) in order to oppress, injure, and defraud your orators, do absolutely refuse to deliver up said patents, their title papers, or the lands, or to convey the same or any part thereof to your orators, as in equity and good conscience they are bound to do; all of which actings, pretences, and doings of the said defendants and their confederates, are contrary to equity and good conscience, and tend to the manifest injury and oppression of your orators. In tender consideration whereof, and for that your orators are remediless in the premises by the strict rules of the common law, and relievable only in a court of equity, where matters of this nature are properly cognizable; to the end, therefore, that the said defendants may respectively full, true, direct, and perfect answers make, upon their respective corporal oaths, according to the best of their respective knowledge, information, and belief, to all and singular the matters and charges aforesaid, as fully in every respect as if the same were here again repeated, and they thereto particularly interrogated; and more especially that they may respectively set forth and discover by what particular title or claim they hold, or pretend to hold, the said lands or any part thereof, and whether they, or any of them, and which of them, have possession of the said patents so issued as aforesaid; and that they may be compelled, by a decree of this honorable court, to deliver up said patents, and all other muniments of title under said patents, to be cancelled or placed in the rightful possession of your orators, and to deliver the possession of the said lands to your orators, and to convey by deed or deeds duly executed and acknowledged said lands to your orators in fee, and to their heirs and assigns, absolutely and forever; or that all title, right, and interest, or pretended right, title, and interest, which said defendants hold in and to said lands, be divested and pass to, and absolutely vest in, your orators, their heirs and assigns, forever, by decree of this honorable court; and that your orators may have such other and further relief in the premises as the nature of their case shall require, and as to your honor shall seem meet. May it please your honor to grant unto your orators the State writ of subpœna, to be directed to the sheriff of said county of Pulaski, and separate writs of subpœna to the sheriffs of Jefferson, Phillips, Chicot, Hempstead, Johnson, Crawford, and Hot Springs

counties, in which said counties a portion of said defendants reside, requiring such sheriffs to summon such defendants as commanded by said writs at a certain day, therein to be specified, personally to be and appear before your honor in this honorable court, and then and there to answer all and singular the premises aforesaid, and to stand to, perform, and abide such order, direction, and decree therein, as to your honor shall seem meet; and your orators, &c.

FOWLER, *Solicitor for the complainants.*

Exhibit B, No. 663.

RECEIVER'S OFFICE, AT LITTLE ROCK, *March* 5, 1834.

Received by the hands of Ben Desha from Lydia Louisa Cloyes, Mary Easther Cloyes, Nathan Henry Cloyes, and William Thomas Cloyes, (heirs of Nathan Cloyes, deceased, late of Pulaski county, A. T.) the sum of one hundred and thirty-five dollars and seventy-six and ¼ cents, being in payment for the northwest and northeast fractional quarters of section two, and the northwest and northeast fractional quarters of section one, in fractional township one, north of the base line, and range twelve, west of the fifth principal meridian, containing in all one hundred and eight 61-100 acres, at $1 25 per acre.

$135 76¼. P. T. CRUTCHFIELD, *Receiver.*

A part of the land for which the within receipt is given, to wit, "the northwest fractional quarter of section two," forms a part of the location made by Governor Pope, in selecting 1,000 acres adjoining the town of Little Rock, granted by Congress to raise a fund for building a court-house and jail for the Territory of Arkansas; and this endorsement is made by direction of the Commissioner of the General Land Office.

P. T. CRUTCHFIELD, *Receiver.*

Receiver's Office, at Little Rock, March 5th, 1834.

April 22, 1843, filed together with exhibit A, within referred to, and writ of subpœnas issued to Pulaski county, and separate writs to Jefferson, Hempstead, Chicot, Phillips, Johnson, Crawford, and Hot Spring counties. Tax and issuing fees, $1 25, paid by A. Fowler, solicitor, &c.

H. HARALSON, *Clerk.*
By J. THOMPSON, *D. C.*

Exhibit A, referred to in the bill of complaint.

Pre-emption claim, 29th May, 1830.

Nathan Cloyes, No. 24, N. W. fractional ¼ 2, 1 N. 12 W. granted for the above fractional ¼, and reject the privilege of entering the adjoining fractions. May 28, 1831.

H. BOSWELL, *Register.*
JOHN REDMAN, *Receiver.*

Exhibit No. 24.

Proof filed 23*d April*, 1831, *and granted May* 28, 1831.

Pre-emption claim, May 29, 1830.

Nathan Cloyes' testimony taken on the 23d April, 1831, before James Boswell, a justice of the peace for the county of Independence, in the register's office, in the presence of the register.

Qutestion by the register. What tract of the public lands did you occupy in the year 1829, that you claimed a right of pre-emption upon?

Answer. On the N. W. fract. ¼ of sec. 2, in township 1 N., of range 12 west, adjoining the Quapaw line, being the first fraction that lies on the Arkansas river, immediately below the town of Little Rock, and contains about twenty-eight twenty-nine acres, as I have been informed by the county surveyor of Pulaski county; and I claim under the law the privilege to enter the adjoining fraction or fractions so as not [to] exceed one hundred and sixty acres, all being on the river below the before named fraction.

Question as before. Did you inhabit and cultivate said fraction of land in the year 1829; and if so, what improvement had you in that year in cultivation?

Answer. I did live on said tract of land in the year 1829, and had done so since the year 1826; and in the year 1829 aforesaid, I had in cultivation a garden, perhaps to the extent of one acre; raised vegetables of different kinds, and corn for roasting years, (ears,) and I lived in a comfortable dwelling, east of the Quapaw line, and on the before named fraction.

Question as before. Did you continue to reside and cultivate your garden aforesaid on the before named fraction until the 29th May, 1830?

Answer. I did, and have continued to do so until this time.

Question as before. Were you, at the passage of the act of Congress under which you claim a right of pre-emption, a farmer; or, in other words, what was your occupation?

Answer. I was a tin-plate worker, and cultivated a small portion of the fraction before named for the comfort of my family, and carried on my business in a shop adjoining my house.

Question as before. Do you know of any interfering claim under the law, that you claim a pre-emption right upon the fraction whereon you live?

Answer. I know of none. And further this deponent saith not.

NATHAN CLOYES.

Sworn and subscribed to before me, the date aforesaid.

J. BOSWELL, *J. P.*

The following is the corroborative testimony of *of* John Saylor, in relation to the foregoing pre-emption claim, taken and sworn, and subscribed to as before.

Question by the register. Do you know any thing about the settlement and cultivation of the public lands by Nathan Cloyes in the year 1829? If you do, relate what you know about it.

counties, in which said counties a portion of said defendants reside, requiring such sheriffs to summon such defendants as commanded by said writs at a certain day, therein to be specified, personally to be and appear before your honor in this honorable court, and then and there to answer all and singular the premises aforesaid, and to stand to, perform, and abide such order, direction, and decree therein, as to your honor shall seem meet; and your orators, &c.

FOWLER, *Solicitor for the complainants.*

Exhibit B, No. 663.

RECEIVER'S OFFICE, AT LITTLE ROCK, *March* 5, 1834.

Received by the hands of Ben Desha from Lydia Louisa Cloyes, Mary Easther Cloyes, Nathan Henry Cloyes, and William Thomas Cloyes, (heirs of Nathan Cloyes, deceased, late of Pulaski county, A. T.) the sum of one hundred and thirty-five dollars and seventy-six and $\frac{1}{4}$ cents, being in payment for the northwest and northeast fractional quarters of section two, and the northwest and northeast fractional quarters of section one, in fractional township one, north of the base line, and range twelve, west of the fifth principal meridian, containing in all one hundred and eight 61-100 acres, at $1 25 per acre.

$135 76$\frac{1}{4}$. P. T. CRUTCHFIELD, *Receiver.*

A part of the land for which the within receipt is given, to wit, "the northwest fractional quarter of section two," forms a part of the location made by Governor Pope, in selecting 1,000 acres adjoining the town of Little Rock, granted by Congress to raise a fund for building a court-house and jail for the Territory of Arkansas; and this endorsement is made by direction of the Commissioner of the General Land Office.

P. T. CRUTCHFIELD, *Receiver.*

Receiver's Office, at Little Rock, March 5th, 1834.

April 22, 1843, filed together with exhibit A, within referred to, and writ of subpœnas issued to Pulaski county, and separate writs to Jefferson, Hempstead, Chicot, Phillips, Johnson, Crawford, and Hot Spring counties. Tax and issuing fees, $1 25, paid by A. Fowler, solicitor, &c.

H. HARALSON, *Clerk.*
By J. THOMPSON, *D. C.*

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Nathan Cloyes' testimony taken on the 23d April, 1831, before James Boswell, a justice of the peace for the county of Independence, in the register's office, in the presence of the register.

Qutestion by the register. What tract of the public lands did you occupy in the year 1829, that you claimed a right of pre-emption upon?

Answer. On the N. W. fract. $\frac{1}{4}$ of sec. 2, in township 1 N., of range 12 west, adjoining the Quapaw line, being the first fraction that lies on the Arkansas river, immediately below the town of Little Rock, and contains about twenty-eight twenty-nine acres, as I have been informed by the county surveyor of Pulaski county; and I claim under the law the privilege to enter the adjoining fraction or fractions so as not [to] exceed one hundred and sixty acres, all being on the river below the before named fraction.

Question as before. Did you inhabit and cultivate said fraction of land in the year 1829; and if so, what improvement had you in that year in cultivation?

Answer. I did live on said tract of land in the year 1829, and had done so since the year 1826; and in the year 1829 aforesaid, I had in cultivation a garden, perhaps to the extent of one acre; raised vegetables of different kinds, and corn for roasting years, (ears,) and I lived in a comfortable dwelling, east of the Quapaw line, and on the before named fraction.

Question as before. Did you continue to reside and cultivate your garden aforesaid on the before named fraction until the 29th May, 1830?

Answer. I did, and have continued to do so until this time.

Question as before. Were you, at the passage of the act of Congress under which you claim a right of pre-emption, a farmer; or, in other words, what was your occupation?

Answer. I was a tin-plate worker, and cultivated a small portion of the fraction before named for the comfort of my family, and carried on my business in a shop adjoining my house.

Question as before. Do you know of any interfering claim under the law, that you claim a pre-emption right upon the fraction whereon you live?

Answer. I know of none. And further this deponent saith not.

NATHAN CLOYES.

Sworn and subscribed to before me, the date aforesaid.

J. BOSWELL, *J. P.*

The following is the corroborative testimony of *of* John Saylor, in relation to the foregoing pre-emption claim, taken and sworn, and subscribed to as before.

Question by the register. Do you know any thing about the settlement and cultivation of the public lands by Nathan Cloyes in the year 1829? If you do, relate what you know about it.

Answer. I know that in the year 1829 Nathan Cloyes lived below Little Rock, near the river, on the Quapaw lands, and *is* [am] satisfied that it is the fraction which the claimant, Cloyes, has stated in his deposition above. I further state said claimant was living on said fraction with his family in a house, and cultivated a small piece of ground, about one acre, near to house, and raised during that year corn and different kinds of vegetables, and that said claimant, Cloyes, continued to remain on said fraction *for* that year until the present time, and under the same cultivation each season; and I further state that the said claimant is a tinner, and did, in the year 1829 aforesaid, carry on his business at the improvement before named, and continued to so until this time.

Question as before. Do you know any other claim of the nature of Nathan Cloyes, on the fraction, which he has stated in his deposition?

Answer. I know there is none; but there is one old field on the adjoining fraction on the river, [upon] which a pre-emption right may be claimed, but I know that no part of that fraction was either inhabited or under cultivation in the year 1829 or 1830.

And further this deponent saith not. JNO. SAYLOR.

Sworn and subscribed to before me, the date before named.

J. BOSWELL, *J. P.*

Nathan W. Maynor and Elliott Bursey, being sworn, state that the foregoing affidavit of John Saylor, in relation to the pre-emption claim of Nathan Cloyes, contains the truth, as they are knowing to all the facts.

N. W. MAYNOR,
ELLIOTT BURSEY.

Sworn and subscribed to before me the date before within.

J. BOSWELL, *J. P.*

REGISTER'S OFFICE, *Little Rock*, *April* 19, 1843.

I hereby certify, that the foregoing five pages of manuscript is a true and correct copy of a paper now on file in this of[fice], and that every letter and figure marked on said paper has been copied on these five said pages.

W. W. STEVENSON, *Reg.*

Filed April 22, 1843.

H. HARALSON, *Clerk.*
By J. THOMPSON, *D. C.*

Subpœna.

STATE OF ARKANSAS, *County of Pulaski:*

In the circuit court of said county, in vacation.

The State of Arkansas, to the sheriff of the said county of Pulaski, greeting:

You are hereby commanded to summon the State of Arkansas, William Russell, the Real Estate Bank of the State of Arkansas, the trus-

tees or assignees of said bank, Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, junior, Anthony H. Davies, Sand. C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, Lorenzo N. Clark, John Drennen, and Robert S. Gibson, and Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, Charles P. Bertrand, John Wassell, John W. Cock, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniels, and John Morrison and Edney, his wife, if they be found within your county, to be and appear before the judge of our circuit court in chancery sitting, at a court to be holden at the court-house in and for the said county of Pulaski, on Monday, the 29th day of May, it being the last Monday in May next after the date hereof, then and there to answer a bill in chancery exhibited against them by Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor, under twenty-one years of age, by Wiley Clayton, his guardian; and this they shall in nowise omit at their peril; and have you then and there this writ.

In testimony whereof, I, Herndon Haralson, clerk of the circuit court in and for the county of Pulaski, have hereunto set my hand [SEAL.] and affixed the seal of said court, at my office, this 22d day of April, A. D. 1843.

H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Sheriff's return.

Executed the subpœna to which this is attached, in Pulaski county, on the 24th April, 1843, on Samuel H. Hempstead, Chester Ashley, Thomas S. Reynolds, Charles P. Bertrand, Fred. W. Trapnall, George C. Watkins, John Percefull, Ebenezer Walters, and James Pitcher; on 25th April, 1843, on John Robins, Henry F. Pendleton, Jacob Mitchell, John H. Leech, William E. Woodruff, William J. Byrd, and Ebenezer Walters, and Lambert Reardon, as trustees of the Real Estate Bank of the State of Arkansas, by delivering to each one of them a true copy thereof, and informing them severally of the contents thereof; and on 24th April, 1843, on Elias N. Conway, as the State of Arkansas, Albert Pike, as attorney for said bank, by delivering to each a true copy thereof at the usual places of residence of each, with a white member of the family of each over the age of fifteen years, and by informing each one with whom said copy was left of the contents thereof; and William Russell, Sam. C. Roane, Henry L. Biscoe, William F. Moore, John Preston, jr., Anthony H. Davies, Sandford C. Faulkner, Silas Craig, Geo. Hill, Enoch J. Smith, James H. Walker, Lorenzo N. Clark, John Drennen, Robert S. Gibson, James

S. Conway, William W. Daniel, John Morrison and Edney, his wife, not found and no inhabitants of my county.

Service on 23, $11.50; 23 copies, $2.30; non ests, 18, $4 50; mileage, $1.50=$19.86.

JAMES LAWSON, JR., *Sheriff*,
By N. B. THOMASSON, and
WM. B. BORDEN,
Deputies.

Returned and filed May 25, 1843. H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Subpœna.

STATE OF ARKANSAS, *County of Pulaski, sct:*

In the circuit court of said county, in vacation.

The State of Arkansas to the sheriff of the county of Jefferson, greeting:

You are hereby commanded to summon Sam. C. Roane, William W. Daniels, and John Morrison and Edney Morrison, his wife, if they be found within your county, to be and appear before the judge of our circuit court in chancery sitting, at a court to be holden at the court-house, in and for the said county of Pulaski, on Monday, the twenty-ninth day of May, it being the last Monday in May next, after the date hereof, then and there (together with the State of Arkansas, William Russell, the Real Estate Bank of the State of Arkansas, the trustees and assignees of said bank, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, junior, Anthony H. Davies, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, Lorenzo N. Clark, John Drennen, Robert S. Gibson, and Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, Charles P. Bertrand, John Wassell, John W. Cock, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, and William J. Byrd,) to answer a bill in chancery exhibited against them by Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor under twenty-one years of age, by Wiley Clayton, his guardian; and this they shall in no wise omit at their peril; and have you then there this writ.

In testimony whereof, I, Herndon Haralson, clerk of the circuit court in and for the county of Pulaski, have hereunto set my [L. S.] hand [and] affixed the seal of said court, at my office, this 22d day of April, A. D. 1843.

H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Came to hand the 29th day of April, A. D. 1843.

JNO. J. HAMMETT,
Sheriff Jefferson Co., Ark.

Sheriff's return.

STATE OF ARKANSAS, *County of Jefferson:*

I, John J. Hammett, sheriff of said county, do certify, to the honorable circuit court of Pulaski county within written, that I executed this subpœna upon the within named Sam. C. Roane, on the 1st day of May, A. D. 1843, at his usual place of abode in Vaugine township, in the county of Jefferson aforesaid, by then and there delivering to him a true copy thereof; and I do further certify, to said honorable circuit court, that the within named William W. Daniel, John Morrison and Edney Morrison, his wife, are not to be found within my county, this the day and date above written.

JOHN J. HAMMETT,
Sheriff of Jefferson county, Ark.

Service	-	75
Mileage	-	36
8 non-ests	-	75
		$1.86.

Filed 9th May, 1843.

H. HARALSON, *Clerk.*
By JOHN K. TAYLOR, *D. C.*

Subpœna.

STATE OF ARKANSAS, *County of Pulaski, sct:*

In the circuit court of said county, in vacation.

The State of Arkansas, to the sheriff of the county of Hempstead, greeting:

You are hereby commanded to summon George Hill, Enoch J Smith, and James H. Walker, if they be found within your county, to be and appear before the judge of our circuit court in chancery sitting, at a court to be holden at the court-house in and for the said county of Pulaski, on Monday, the twenty-ninth day of May, it being the last Monday in May next after the date hereof, then and there, together with the State of Arkansas, William Russell, the Real Estate Bank of the State of Arkansas, the trustees or assignees of said bank, Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Anthony H. Davies, Sandford C. Faulkner, Silas Craig, Lorenzo N. Clark, John Drennen, and Robert S. Gibson, and Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, Charles P. Bertrand, John Wassell, John W. Cock, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, and John Morrison and Edney, his wife, if they be found within your county, to be and appear before the judge of our circuit court in chancery sitting, at a court to be holden at the court-house, in and for the said county of Pulaski, on Monday, the 29th day of May, it being the last Monday in May next after the date hereof, then and there to answer a bill in chancery exhibited against them by Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper, Mary

E. Hooper, his wife, and Nathan H. Cloyes, a minor under twenty-one years of age, by Wiley Clayton, his guardian; and this they shall in no wise omit at their peril; and have you then and there this writ.

In testimony whereof, I, Herndon Haralson, clerk of the circuit court in and for the county of Pulaski, have hereunto set my [L. S.] hand and affixed the seal of said court, at my office, this 22d day of April, A. D. 1843.

H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Sheriff's return.

I, William Arnett, sheriff in and for the county of Hempstead, in the State of Arkansas, hereby certify, that I executed the within and foregoing writ on the within named George Hill and James H. Walker, by delivering them a copy of the same on the first day of May, A. D. 1843; and on the within named Enoch J. Smith, by leaving a true copy of the same at his usual place of abode with a free white person, a member of his family, over fifteen years of age, on the 3d day of May, A. D. 1843, within the county of Hempstead, in the State of Arkansas.

Service, $1.50; 35 av. mar. 3 cts., $1.05=$2.55.

WILLIAM ARNETT, *Sheriff*,
By C. K. WITTER, *D. Sheriff*.

Returned and filed, May 15, 1843.

H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Subpœna.

In the circuit court of said county. In vacation.

STATE OF ARKANSAS, *County of Pulaski, sct:*

The State of Arkansas to the sheriff of Chicot county, greeting:

You are hereby commanded to summon Anthony A. Davis, Sandford C. Faulkner, and Silas Craig, if they be found within your county, to be and appear before the judge of our circuit court, in chancery sitting, at a court to be holden at the court-house, in and for the said county of Pulaski, on Monday the twenty-ninth day of May, it being the last Monday in May next after the date hereof, then and there, together with the State of Arkansas, William Russell, the Real Estate Bank of the State of Arkansas, the trustees or assignees of said bank, Sam'l. C Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, junior, George Hill, Enoch J. Smith, James H. Walker, Lorenzo N. Clark, John Drennen, and Robert S. Gibson, and Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, Charles P. Bertrand, John Wassell, John W. Cock, Fredrick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, and John Morrison and Edney his wife, if they be found within your coun-

ty, to be and appear before the judge of our circuit court, in chancery sitting, at a court to be holden at the court-house in and for the said county of Pulaski, on Monday, the twenty-ninth day of May, it being the last Monday in May next after the date hereof, then and there to answer a bill in chancery exhibited against them by Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor under twenty-one years of age, by Wiley Clayton, his guardian. And this they shall in no wise omit at their peril; and have you then and there this writ.

In testimony whereof, I, Herndon Haralson, clerk of the circuit court in and for the county of Pulaski, have hereunto set my hand [SEAL.] and affixed the seal of said court, at my office, this 22d day of April, A. D. 1843.

H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Sheriff's return.

I, Wilford Garner, sheriff of the county of Chicot, do hereby certify, that I executed this writ on Silas Craig, Sandford C. Faulkner, and Anthony H. Davies, by handing each of them a copy of this writ, on the 28th day of April, 1843, in the county of Chicot, and State of Arkansas; the within named Sam'l C. Roane, Ebenezer Walters, L. Reardon, H. L. Biscoe, W. F. Moore, John Preston, jr., George Hill, E. J. Smith, J. H. Walker, L. N. Clark, J. Drennen, and R S. Gibson, R. C. Byrd, James Pitcher, W. P. Officer, Ebenezer Walters, C. P. Bertrand, J. Wassell, J. W. Cock, F. W. Trapnall, G. C. Watkins, Samuel H. Hempstead, J. Robins, John Percefull, J. S. Conway, H. F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, J. H. Leech, Wm. E. Woodruff, Chester Ashley, Wm. J. Byrd, W. W. Daniel, and John Morrison and Edney, his wife, are not to be found within my county.

Sheriff's fees, 3 services $1.50; 25 miles circular 75; 34 non ests $5.50.

WILFORD GARNER,
Sheriff of Chicot county.

Returned and filed, May 12, 1843.

H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Subpœna.

In the circuit court of said county, in vacation.

STATE OF ARKANSAS, *County of Pulaski, sct:*

The State of Arkansas, to the sheriff of the county of Phillips, greeting:

You are hereby commanded to summon Henry L. Biscoe, William F. Moore, and John Preston, jr., if they be found within your county, to be and appear before the judge of our circuit court, in chancery sitting, at a court to be holden at the court-house in and for the said county of Pulaski, on Monday the twenty-ninth day of May, it being the

last Monday in May next after the date hereof, then and there, together with the State of Arkansas, William Russell, the Real Estate Bank of the State of Arkansas, the trustees or assignees of said bank, Sam'l C. Roane, Ebenezer Walters, Lambert Reardon, Anthony H. Davies, Sandford C. Faulkner, Silas Craig, Enoch J. Smith, George Hill, James H. Walker, Lorenzo N. Clark, John Drennen, and Robert S. Gibson, and Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, Charles P. Bertrand, John Wassell, John W. Cock, Fredrick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, and John Morrison and Edney, his wife, if they be found within your county, to be and appear before the judge of our circuit court, in chancery sitting, at a court to be holden at the court-house in and for the said county of Pulaski, on Monday the twenty-ninth day of May, it being the last Monday in May next after the date hereof, then and there to answer a bill in chancery exhibited against them by Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor under twenty-one years of age, by Wiley Clayton, his guardian. And this they shall in no wise omit at their peril; and have you then and there this writ.

In testimony whereof I, Herndon Haralson, clerk of the circuit court in and for the county of Pulaski, have hereunto set my hand [SEAL.] and affixed the seal of said court, at my office, this 22d day of April, A. D. 1843. H. HARALSON, *Clerk*.

By J. THOMPSON, *D. C.*

Sheriff's return.

Came to hand May the 10th, 1843. MILLER IRVIN, *Sheriff*.

Executed in Phillips county, within the State of Arkansas, May the 13th, A. D. 1843, by delivering to the within named Henry L. Biscoe, William F. Moore, and John Preston, junior, they being trustees of the Real Estate Bank of the State of Arkansas, a true copy of the within summons.

Services, 50 each - - - - - - - -	$1 50
Copy, 20 each - - - - - - - - -	60
	$2 10

MILLER IRVIN,
Sheriff of Phillips county.

Filed 1st June, 1843. H. HARALSON, *Clerk*.

Subpœna.

In the circuit court of said county, in vacation.

STATE OF ARKANSAS, *County of Pulaski, set:*

The State of Arkansas, to the sheriff of the county of Johnson, greeting:

You are hereby commanded to summon Lorenzo N. Clark, if he be

found within your county, to be and appear before the judge of our circuit court, in chancery sitting, at a court to be holden at the court-house in and for the said county of Pulaski, on Monday, the twenty-ninth day of May, it being the last Monday in May next after the date hereof, then and there, together with the State of Arkansas, William Russell, the Real Estate Bank of the State of Arkansas, the trustees or assignees of said bank, Sam'l C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, junior, Anthony H. Davies, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, John Drennen, and Robert S. Gibson, Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, Charles P. Bertand, John Wassell, John W. Cock, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell; Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, and John Morrison and Edney, his wife, if they be found within your county, to be and appear before the judge of our circuit court, in chancery sitting, at a court to be holden at the court-house in and for the said county of Pulaski, on Monday the twenty-ninth day of May, it being the last Monday in May next after the date hereof, then and there to answer a bill in chancery, exhibited against them by Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor under twenty-one years of age, by Wiley Clayton, his guardian. And this they shall in no wise omit at their peril; and have you then and there this writ.

In testimony whereof, I, Herndon Haralson, clerk of the circuit court in and for the county of Pulaski, have hereunto set my hand [SEAL.] and affixed the seal of said court, at my office, this 22d day of April, A. D. 1843.

H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Return.

Came to hand on the 26th day of May, A. D. 1843, at about 10 o'clock in the forenoon of said day.

WM. M. H. NEWTON,
Sheriff of Johnson county.

Fees for returning, 25 cents.
Filed 1st June, 1843. H. HARALSON, *Clerk*.

Subpœna.

In the circuit court of said county, in vacation.

STATE OF ARKANSAS, *County of Pulaski, sct:*

The State of Arkansas, to the sheriff of the county of Crawford, greeting:

You are hereby commanded to summon John Drennen, Robert S. Gibson, if they be found within your county, to be and appear before

the judge of our circuit court, in chancery sitting, at a court to be holden at the court-house in and for the said county of Pulaski, on Monday, the twenty-ninth day of May, it being the last Monday in May next after the date hereof, then and there, together with the State of Arkansas, William Russell, the Real Estate Bank of the State of Arkansas, the trustees or assignees of said bank, Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Anthony H. Davies, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, Lorenzo N. Clarke, and Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, Charles P. Bertrand, John Wassell, John W. Cock, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, and John Morrison and Edney, his wife, if they be found within your county, to be and appear before the judge of our circuit court, in chancery sitting, at a court to be holden at the court-house in and for the said county of Pulaski, on Monday, the twenty-ninth day of May, it being the last Monday in May next after the date hereof, then and there to answer a bill in chancery exhibited against them by Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor under twenty-one years of age, by Wiley Clayton, his guardian; and this they shall in no wise omit at their peril; and have you then and there this writ.

In testimony whereof, I, Herndon Haralson, clerk of the circuit court in and for the county of Pulaski, have hereunto set my hand, [L. S.] and affixed the seal of said court at my office, this 22d day of April, A. D. 1843. H. HARALSON, *Clerk*.

By J. THOMPSON, *D. C.*

Return.

Came to hand, 26th May, 1843. ELI BELL,

Sheriff of Crawford county, Arkansas.

I executed the within writ on the within named John Drennen and Robert S. Gibson, on the 27th day of May, 1843, at the county of Crawford, Arkansas, by then and there delivering to them a true copy thereof. ELI BELL,

Sheriff of Crawford co., Arkansas.

Sheriff's fees, 2 services, $1 00.

Returned and filed, 2d June, 1843.

H. HARALSON, *Clerk*.

Subpœna.

In the circuit court of said county, in vacation.

STATE OF ARKANSAS, *County of Pulaski, sct:*

The State of Arkansas, to the sheriff of the county of Hot Spring, greeting:

You are hereby commanded to summon James S. Conway, if he be

found within your county, to be and appear before the judge of our circuit court, in chancery sitting, at a court to be holden at the court-house in and for the said county of Pulaski, on Monday, the twenty-ninth day of May, it being the last Monday in May next after the date hereof, then and there, together with the State of Arkansas, William Russell, the Real Estate Bank of the State of Arkansas, the trustees or assignees of said bank, Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, jr., Anthony H. Davies, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, John Drennen, and Robert S. Gibson, and Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, Charles P. Bertrand, John Wassell, John W. Cock, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, and John Morrison and Edney, his wife, if he be found within your county, to be and appear before the judge of our circuit court, in chancery sitting, at a court to be holden at the court-house in and for said county of Pulaski, on Monday, the twenty-ninth day of May, it being the last Monday in May next after the date hereof, then and there to answer a bill in chancery exhibited against them by Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor under twenty-one years of age, by Wiley Clayton, his guardian. And this they shall in no wise omit at their peril; and have you then and there this writ.

In testimony whereof, I, Herndon Haralson, clerk of the circuit court in and for the county of Pulaski, have hereunto set my [L. S.] hand and affixed the seal of said court at my office, this 22d day of April, A. D. 1843.

H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Return.

Came to hand, April 25th, A. D. 1843.

E. CANLEY,
Sheriff of Hot Spring county, Arkansas.

The within named James S. Conway is not to be found within my county. May the 11th, A. D. 1843. E. CANLEY,
Sheriff of Hot Spring county, Arkansas.

Fees, non est, $0 25.

N. B. Mr. J. S. Conway has removed his white family to Lafayette county, therefore I could not execute by serving a copy.

E. CANLEY, *Sheriff.*

Returned and filed, May 15th, 1843.

H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

May 31*st*, A. D. 1843.

In Chancery.

CLOYES' HEIRS,
vs.
THE STATE OF ARKANSAS, William Russell, and others. } 71.

Order.

Came said Hempstead, Thorn, and other of said defendants, by Hempstead and Johnson, their solicitors, and, on their motion, it is ordered that they have leave to file their motion for further time to answer the bill in chancery in this case, which is done accordingly.

In chancery.

COYES' HEIRS, complainants,
vs.
THE STATE OF ARKANSAS, Thorn and Hempstead, and others.

May term, 1843. Motion.

The defendant, Hempstead, for himself and for Thomas Thorn and others of said defendants, moves for further time to answer the bill in chancery in this case. HEMPSTEAD & JOHNSON.

Filed, 31st May, 1843. H. HARALSON, *Clerk*.
By JNO. K. TAYLOR, *D. C.*

June 29, 1843.

In chancery.

CLOYE'S HEIRS, complainants,
vs.
THE STATE OF ARKANSAS & others, defend'ts. } 71.

Order.

Came the Real Estate Bank of the State of Arkansas, and its trustees, and, on their motion, it is ordered that they have leave to file their answer in this case, with the exhibits, which is filed accordingly.

Answer of Real Estate Bank and trustees.

The joint and several answers of the Real Estate Bank of the State of Arkansas, and of Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, jr., Anthony H. Davies, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, John Drennen, Lorenzo N. Clark, and Robert S. Gibson, as trustees of the Real Estate Bank of the State of Arkansas, and as successors and survivors of Carey A. Harris, deceased, and of James S. Conway and Daniel T. Witter, removed, to the bill of complaint exhibited against them, with others, in the circuit court of Pulaski county, in the State of Arkansas, in chancery, by Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor of tender age, by Wiley Clayton, his guardian.

These respondents, now and at all times hereafter, saving and reserving to themselves all and all manner of benefit and advantage of exception to the many errors, irregularities, uncertainties, and insufficiencies in the said complainants' bill contained, for answer thereto, or unto so much and such parts thereof as they are advised it is material and necessary for them to make answer unto, answer and say, they admit that proof of a pre-emption claim to the northwest fractional quarter of section 2, in township 1 north, of range 12 west, was made by the Nathan Cloyes in said bill mentioned, at or about the time and in the manner set forth in said bill; and that said proof, and the manner thereof, by the persons on whose oaths it was made, are correctly exhibited in said exhibit "A;" but these respondents positively deny that the said Nathan Cloyes ever had a valid pre-emption to or upon said northwest fractional quarter, section 2; and even that the proof of said pre-emption by the said Cloyes was, from beginning to end, a tissue of fraud, falsehood, and perjury, not only on the part of said Cloyes, but also on the part of those persons by whose oaths the said alleged pre-emption was established.

These respondents know nothing more of the claims set up in said bill than what they see upon the face of the bill itself; but knowing, as they do, that the title under which they hold the portion of said lands in said bill mentioned, which portion will be more particularly set forth hereafter, is derived almost immediately from the Government of the United States, for a *a* full valuable consideration; they again aver that the claim set up in said bill is without foundation in justice, a fraud upon the rightful claims of these respondents, and was established at said land office at Batesville by fraud, falsehood, and perjury; and that said Cloyes never did have any valid right of pre-emption to said fraction, nor have the persons in said bill mentioned, claiming to be his heirs, any right whatever, either in law or equity, to said lands.

These respondents further answering say, that they admit, as stated in said bill, that an act of Congress, entitled "an act granting to the Territory of Arkansas one thousand acres of land for the erection of a court-house and jail at Little Rock, was approved on the 15th of June, A. D. 1832, and an act to authorize the governor of said territory to sell said land, so granted as aforesaid, and for other purposes, was approved the 2d day of March, A. D. 1833; but these respondents expressly deny that under either one or both said acts of Congress, that John Pope, then governor of said territory, located either illegally or by mistake, for the benefit of said territory, the said fractional quarter section of land, but admit that said John Pope did locate said fractional quarter section of land under and by virtue of the said two acts of Congress, as by those acts he rightfully and lawfully might and did locate them for the benefit of said territory; and these respondents further admit, that a patent was issued by the Government of the United States to said John Pope, as governor as aforesaid, and to his successor in office, for the benefit of said territory, for the purpose of erecting a court-house and jail, as in said bill alleged.

These respondents further answering say, that as to the alleged proceedings of the said John Pope, as such governor as aforesaid, in selecting and locating said northeast fractional *fractional* quarter of section two, and the northwest and northeast fractional quarters of section one, under and by virtue of the acts of Congress in that respect in said bill referred to, and his proceedings under pretence of said acts, or any other of his proceedings in relation to the three last named fractional quarters of the sections above named, these respondents know nothing, and disclaim having any interest whatever in said three last named tracts, and neither answer, admit, or deny, anything in said bill contained, but what has special reference to said northwest fractional quarter of section two.

And these respondents further answer and say, they know nothing as to the decease of the said Nathan Cloyes, or of the persons in said bill being his heirs. They therefore deny that said persons in said bill named are the heirs of said Nathan Cloyes, and demand proof thereof. And they further answer, that they know nothing of the payment of the sum of money in said bill alleged to have been paid by Ben Desha for the benefit of the complainants. They therefore deny such payment for the purpose aforesaid, or for any other purpose, and require proof of that allegation.

And these respondents further answering state, that a patent for said northwest fractional quarter of section two, in township one north, of range twelve west, was duly issued to the said John Pope, as governor, and his successors in office, in the manner stated in said bill, except that said patent was issued by the United States to said governor legally and regularly, without fraud, misunderstanding, or mistake, the said United States Government well knowing that there was no claim whatever on said land, and that the sole title and claim thereto was in the said United States Government, both at the time when said act of Congress granting one thousand acres for the purpose aforesaid was passed, and at the time when said act authorizing said governor to locate and sell the same was passed, and also at the time when said patent issued to said governor, and his successors in office, conveying to him, in his capacity of governor, the said northwest fractional quarter of section two, which patent is not in the possession of these respondents, and they cannot produce the same; but, should they be able to obtain the same, or a copy thereof, they pray leave to file the same as a part of this answer, marked exhibit "B."

And further answering these respondents state, that the said John Pope, governor as aforesaid, by virtue of the powers vested in him by the act of Congress in said bill mentioned in that respect, did, on the fourth Monday in October, A. D. 1833, proceed to sell the land so granted to said territory as aforesaid, among which was the said northwest fractional quarter of section two, a portion of which last mentioned tract had lately before then been laid off into lots and blocks, under the supervision and direction of said John Pope as such governor, at public vendue; at which sale one Ambrose H. Sevier became the last and highest bidder for that portion of said fractional quarter of section two,

known as lots numbered four, five, and six, in block numbered eight, among other lots purchased by said Sevier at said sale. And that afterwards, on the 17th day of June, in the year 1836, the said Sevier having fully paid the purchase money for the lots so purchased by him as aforesaid, his excellency William S. Fulton, then governor of said territory, and the immediate successor of said John Pope in said office, by deed of that date, duly executed under his hand and the seal of said territory, conveyed in fee simple to said Sevier, among other lots so by him purchased as aforesaid, the said lots 4, 5, and 6, in block 8, which deed was duly executed and recorded in the county of Pulaski, where said lots are situated; a certified copy whereof is herewith exhibited, marked C, and prayed to be taken as part of this response; the original, not being within the possession or control of these respondents, cannot be now exhibited.

And these respondents further answering state, that on the 31st day of August, A. D. 1839, the said Ambrose H. Sevier, being then the owner in fee simple of said lots 4, 5, and six, in block No. 8, situate in part of the city of Little Rock known as Governor Pope's location, east of the Quapaw line, did, on that day, by deed of that date, duly executed and acknowledged by himself, and by Juliet E., his wife, in consideration of the sum of five thousand dollars, to him paid in hand by the Real Estate Bank aforesaid, sold and conveyed to said bank, and its assigns, in fee simple, the said lots 4, 5, and 6, in block 8, to have and to hold said lots to said bank and its assigns forever, together with all the rights, privileges, and appurtenances thereto belonging, or in any wise appertaining; which deed was duly filed for record, and recorded in said county on the 1st day of October, A. D. 1839; all which will more fully appear by a true copy of said deed herewith exhibited, marked D, and prayed to be taken as part of this answer.

And these respondents further answer and say, that said purchase from said Sevier was made in the most perfect good faith, and without any notice or knowledge whatever, either constructive or otherwise, of any adverse claim thereto; that a regular patent had regularly issued by the United States to the governor of said territory, and the portion of said lands now owned and occupied by these respondents, trustees as aforesaid, had been regularly conveyed to said Sevier; and the said bank, for the purpose of avoiding any future litigation in relation to the title to the lots it should purchase for the erection of a banking-house, selected the aforesaid three lots, under the full belief that there was not, nor could be, any doubt or difficulty about the title thereto; and, in the full faith that their title thereto was indisputable, have proceeded, at an expense to them of twenty-five thousand dollars, to erect a banking-house and other buildings and improvements upon said lots, and this, too, without ever having it intimated to them that there was any adverse claim, until after all said improvements had been completed at the enormous expense aforesaid; the said complainants never giving these respondents any notice of their said claim until said build-

ings had been entirely completed, nor until the service of the subpœna upon them in this cause.

And these respondents further answering say, that said Real Estate Bank, on the 2d day of April, A. D. 1842, by deed of that date duly executed by the president of said bank, and having the corporate seal affixed thereto, conveyed all its property, real and personal, goods, chattels, moneys, debts, effects, rights, credits, choses in action, and property of every name, nature, and description whatsoever, in trust for the payment of all its debts in a certain manner and order therein mentioned, among which was the said three lots, and the banking-house, buildings, improvements, ways, hereditaments, and appurtenances thereon situate, and thereto belonging, and which had been erected at the expense aforesaid, to these respondents, Roane, Biscoe, Moore, Preston, Davis, Faulkner, Craig, Hill, Smith, Drennen, Clark, and Gibson, together with said Cary A. Harris, deceased, and to James S. Conway and Daniel T. Wilter, as trustees; and the said Harris, having soon thereafter departed this life, and the vacancy created thereby not being filled within three months thereafter, and said Conway and Wilter having failed to give bond as required by said deed, his honor the chancellor for said county of Pulaski did, on the 3d day of January, A. D. 1843, appoint these respondents, Walters, Reardon, and Walker, in place of said Harris, and in place of said Conway and Wilter, who he had removed from office on that day for refusal to comply with the requisitions of said deed, who now, together with the residue of said trustees, form the legal trustees of said bank; which deed was duly recorded in said county, and a copy of which will be in due time exhibited, if necessary, as part of this bill, marked E.

And these respondents further answering deny all and all manner of combination, confederacy, and fraud, in relation to said three lots, or any other portion of the lands claimed in said bill; but aver that said complainants are guilty of gross and palpable fraud, in standing silently by and permitting said bank to erect said improvements on said lots, and to lay out and expend such a vast amount of money upon said lots, without ever giving any notice of their claim to these respondents; and these respondents say, they are much vexed that said complainants should seek in a court of equity to enforce a claim of this nature against these respondents, when the complainants were intending, at the time when the said improvements were put upon said lots, to attempt, at some future day, by the aid of the courts of the country, to wrest said lots and improvements entirely out of the hands of these respondents without any equivalent therefor. Wherefore, your orators pray, that in the event the title of said complainants should be decided to be good, they may be compelled, by decree of this court, to refund to these respondents the amount of money expended by these respondents in erecting the buildings and improvements thereon, and to abide such other and further decree in the premises as the nature of the case may require. All of which matters these respondents are ready to aver, maintain, and prove, as this honorable court shall direct; and having fully answered,

confessed, denied, or disclaimed, to all and every material fact of said bill, they pray to be hence dismissed, with their reasonable costs by them most wrongfully expended, &c.

PIKE & BALDWIN, *Solicitors.*

STATE OF ARKANSAS, *county of Pulaski, sct:*

We, Ebenezer Walters and Lambert Reardon, two of the above named respondents, do solemnly swear, that the matters set forth in the foregoing response, so far as stated as of our own knowledge, are true; and so far as stated as on information and belief, we believe them to be true in substance and fact. So help us God.

E. WALTERS.
L. REARDON.

Sworn to and subscribed before me, James D. Fitzgerald, an acting justice of the peace for said county, this 29th day of June, 1843.

JAMES D. FITZGERALD, *J. P.*

Exhibit.

This deed, made and entered into this seventeenth day of June, in the year of our Lord one thousand eight hundred and thirty-six, by and between William S. Fulton, governor of the Territory of Arkansas, of the first part, and Ambrose H. Sevier, of said territory, of the second, witnesseth:

That whereas, at a public sale of lots and other tracts or parcels of land, sold at the court-house door, in the town of Little Rock, in the county of Pulaski, and Territory of Arkansas, being part of one thousand acres of land, granted by Congress for the purpose of erecting a court-house and jail in the said town of Little Rock, and selected by John Pope, late governor of said territory, in pursuance of law, and the predecessor in said office of the said William S. Fulton, governor as aforesaid, which said land, granted and selected as aforesaid, or some part thereof, was laid off and subdivided by Allen Martin, deputy surveyor for the county of Pulaski aforesaid, under the direction of the said John Pope, then governor of said territory, and sold by said John Pope, as such governor as aforesaid, at a public sale thereof, which commenced on the fourth Monday in October, in the year of our Lord one thousand eight hundred and thirty-three, and was made by virtue and in pursuance of the authority vested in the said John Pope as such governor as aforesaid, by an act of Congress, entitled "An act to authorize the governor of the Territory of Arkansas to sell the land granted to said territory by an act of Congress, approved the 15th day of June, in the year of Christ eighteen hundred and thirty-two, and for other purposes," and agreeably to the proclamation of said John Pope, governor as aforesaid, for the sale thereof, dated the 7th day of May, A. D. 1833, duly published, and giving public notice of said sale. And whereas, also, Ambrose H. Sevier, being the highest and last bidder at said sale, became the purchaser of the following described lots or parcels of land, in the new ad-

dition to the said town of Little Rock, within the eight hundred and forty acres selected by the said John Pope, governor, as part of one thousand acres granted by Congress for a court-house and jail, and described on a plat exhibited at the said sale by numbers one, two, three, four, five, and six, in block or square number eight, being the east half of said block or square.

And whereas, also, William Field, being the highest and last bidder at said sale, became the purchaser of the following described lots or parcels of lands, in the new addition to the said town of Little Rock, within the eight hundred and forty acres selected by the said John Pope, governor, as part of one thousand acres granted by Congress for a court-house and jail, and described on the plan of said addition, made out by said Martin, and exhibited at the time of sale, by numbers seven, eight, nine, ten, eleven, and twelve, of block or square number eight in said addition. And whereas, also, the said William Field, by his deed, bearing date the 8th day of August, 1835, has sold and conveyed the said lots, numbered seven, eight, nine, ten, eleven, and twelve, in block numbered eight, in the addition to said Little Rock, purchased by him at said sale as aforesaid, to the said Ambrose H. Sevier, and his heirs and assignees, and requested the governor of said territory to convey the same to said Sevier, and to his heirs and assigns. And the said Ambrose H. Sevier, and William Field having *respective* paid to the said John Pope, governor as aforesaid, the one-fourth part of the purchase money in hand, and executed bonds with security for the payment of the residue thereof, agreeably to the terms of sale, received from the said John Pope, then governor as aforesaid, certificates of their respective purchase aforesaid; the certificates to the said Sevier bearing date on the fifth, and those to said Field bearing date on the thirteenth day of November, all in the year of Christ eighteen hundred and thirty-three. And whereas, also, it is now shown to the satisfaction of the said William S. Fulton, governor of the Territory of Arkansas, that the said Ambrose H. Sevier and William Field have respectively fully paid the said residue of the purchase money aforesaid, for the purchase of said several lots or parcels of land, according to their respective agreements in that behalf. And whereas the said William S. Fulton, governor of the Territory of Arkansas aforesaid, is the immediate successor of the said John Pope in said office.

Now, therefore, in consideration of the premises, and in consideration of the sum of six hundred and ten dollars, the price of said lots so purchased as aforesaid, by said Sevier and Field, having been paid as aforesaid by the said Ambrose H. Sevier and William Field, before the sealing and delivery of these presents, and by virtue of the authority vested in me by law, I, the said William S. Fulton, governor of the Territory of Arkansas as aforesaid, as such governor as aforesaid, have granted, bargained, and sold, and do by these presents grant, bargain, and sell, to the said Ambrose H. Sevier, and to his heirs and assigns forever, the said several tracts or parcels of land hereinbefore mentioned and described, that is to say, the whole of

block number eight, in the addition to the town of Little Rock, in the county of Pulaski, and Territory of Arkansas aforesaid, as mentioned and described in the before mentioned certificates of sale thereof; to have and to hold the same, together with all and singular the privileges, appertenances, improvements, and all rights thereto belonging, or in any wise appertaining, to the said Ambrose H. Sevier, and to his heirs and assigns forever; and I do by these presents, as such governor as aforesaid, bind myself and my successors in said office, to warrant and defend the right and title of, in, and to said lots, so far only as the governor and his successors in said office are bound by law to defend the same, and no further; and I am not in any event to be personally responsible for any failure of title to said lots, or any of them, to the said Sevier, and to his heirs and assigns forever.

In testimony whereof, I, the said William S. Fulton, governor of the Territory of Arkansas, do hereunto set my hand, and cause [SEAL.] the seal of said territory to be hereunto affixed, at Little Rock, in said territory, on the day and year first above written.

WM. S. FULTON.

TERRITORY OF ARKANSAS,
County of Pulaski, ss:

I, John P. Field, clerk of the circuit court, and ex officio recorder of the county of Pulaski, hereby certify, that the annexed and foregoing instrument of writing was filed for record in my office, on the 24th day of July, and is now duly recorded in record book I, pages 288, 289, and 290.

In testimony whereof I have hereunto set my hand as clerk, and affixed the seal of office at Little Rock, this 24th day of July, [SEAL.] 1836, and in the year of American independence the 61st.

JOHN P. FIELD, *Clerk.*

STATE OF ARKANSAS,
County of Pulaski, sct:

I, Lemuel R. Lincoln, clerk of the circuit court in and for the county of Pulaski, and ex officio recorder for said county, do hereby certify, that the foregoing 5 pages contain, and [are] a true and complete copy of the deed between the parties therein mentioned, as the same now *appeares* of record in my office, on book I, pages 288, &c.

In testimony whereof I have hereunto set my hand as clerk and ex officio recorder aforesaid, and affixed the seal of my office, at [L. S.] Little Rock, this 22d day of October, A. D. 1839, and in the year of the American independence the 64th.

LEMUEL R. LINCOLN, *Clerk.*

Exhibit D.

This deed, made this 31st day of August, anno domini eighteen hundred and thirty-nine, by and between Ambrose H. Sevier and Juliet E. Sevier, his wife, of the first part, and the Real Estate Bank of the State of Arkansas of the second part, witnesseth: that the said party of

the first part, for and in consideration of the sum of five thousand dollars, in hand paid to the said A. H. Sevier, the receipt whereof he doth hereby acknowledge, hath granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said Real Estate Bank of the State of Arkansas, and their assigns, in fee simple, three lots or parcels of land, in the city of Little Rock, east of the Quapaw line, and designated on the plat as lots numbered four, five, and six, in block numbered eight, containing one hundred and fifty feet on First street, and one hundred and forty feet on Markham street, it being the northeast quarter of said block, together with all the appertenances, rights, and privileges thereto belonging or in any wise appertaining; to have and to hold the aforesaid three lots of land above described to the said party of the second part, and their assigns, in fee simple forever; and the said party of the first part, for himself and his heirs, the aforesaid three lots of land, and every parcel thereof, against him and his heirs, and against all and every other person or persons whatsoever, to the said party of the second part, and their assigns, shall and will warrant, and forever defend by these presents.

In witness whereof we have hereunto set our hands and seals, this day and date above written.

A. H. SEVIER, [SEAL.]
J. E. SEVIER. [SEAL.]

Signed, sealed, and delivered, in presence of—
BENJ. JOHNSON,
THOS. W. NEWTON,
G. F. JOHNSON.

Exhibit.

UNITED STATES OF AMERICA,
State of Arkansas, ss:

This day, before the undersigned, notary public, for the Real Estate Bank, Little Rock, personally came and appeared Ambrose H. Sevier, whose name is above subscribed, and acknowledged that he had signed, sealed, and executed the within and foregoing deed of conveyance, to the Real Estate Bank of Arkansas, for the uses and purposes therein mentioned and contained. And on the same day also appeared, voluntarily, before me, Juliet E. Sevier, to me personally known, and in the absence of her said husband declared that she had, of her own free will and accord, executed, signed, sealed, and delivered the within and foregoing deed to the Real Estate Bank of Arkansas, thereby, and by these presents, relinquishing all her right of dower in and to the three lots of ground in said deed described, for the purposes therein contained and set forth, without compulsion, or undue influence of her husband.

In testimony whereof I have hereunto subscribed my name and affix my seal of office, at Little Rock, this 31st day of August, A. D. 1839.

[L. S. of Notary Public.]

THOS. W. NEWTON,
Notary Public.

STATE OF ARKANSAS,
County of Pulaski, sct:

I, Lemuel R. Lincoln, clerk of the circuit court, and ex officio recorder for the county aforesaid, do hereby certify, that the annexed and foregoing instrument of writing was filed for record in my office on the 16th day of September, A. D. 1839, and the same is now duly recorded in record book L, page 198, &c.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, at Little Rock, this 1st day of October, in [L. S.] the year of our Lord one thousand eight hundred and thirty-nine, and of the independence of the United States the 64th.

LEMUEL R. LINCOLN,
Clerk and ex officio recorder.

Filed June 29th, 1843.

H. HARALSON, *Clerk*,
By J. THOMPSON, *D. C.*

July 3d, A. D. 1843.

Filing motion.

CLOYES' HEIRS et al., complainants,
vs.
THE STATE OF ARKANSAS and others, defendants. } 71.

On this day came the said defendants, by their solicitors, and filed their motion and affidavit for a rule upon the said complainants, returnable to a day certain, to furnish security for costs herein in such amount as may be deemed reasonable, or that they show good cause why they should not; which motion is filed accordingly.

Motion.

In the Pulaski circuit court, in chancery, at the May term, 1843.

THE STATE OF ARKANSAS, William Russell, and others, defendants,
advs.
ROBINSON LYTLE and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor, by Wiley Clayton, his guardian, complainants. } No. 71.

In chancery.

At this day, George C. Watkins and Frederick W. Trapnall, two of said defendants, suggest and show to the court here, that the costs of this suit are like to be very great, and will not fall short of five hundred dollars; that these defendants, among others, will be put to great costs and expenses, which they will necessarily have to expend and advance in defending this suit, so far as they are concerned; that the said complainants are unable to pay the costs of this suit, and are irresponsible

therefor; and that the officers of this court are endangered, with respect to their legal demands growing out of the prosecution of this suit; and that justice to the numerous defendants requires that they should have some security for their costs, for which they may become liable; and upon this showing, verified by the annexed affidavits, they pray the court for a rule upon the said complainants, returnable to a day certain, to furnish security for costs herein, in such amount as may [be] deemed reasonable, or that they show good cause why they should not do so.

GEO. C. WATKINS,
F. W. TRAPNALL.

I, George C. Watkins, the above named defendant, do solemnly swear, that I have good reason to believe, and verily do believe, the foregoing suggestion and shewing by me subscribed to be true, in substance and in fact.

GEO. C. WATKINS.

Sworn to and subscribed in open court, this 1st day of July, 1843.
H. HARALSON, *Clk.*

I, Herndon Haralson, clerk of this court, do solemnly swear, that I have good reason to believe, and verily do believe, that [the] foregoing suggestion and shewing, made by George C. Watkins, is true in substance and fact.
H. HARALSON.

Sworn to and subscribed in open court, this 1st day of July, 1843.
JOHN J. CLENDENIN, *Judge.*

Filed 3d June, 1843.

H. HARALSON, *Clk.*

Subpœna.

STATE OF ARKANSAS, *County of Pulaski, sct:*

In the circuit court of said county.—In vacation.

The State of Arkansas, to the sheriff of the county of Jefferson, greeting:

You are hereby commanded, as you have heretofore been commanded, to summon William W. Daniel, and John Morrison and Edney Morrison, his wife, if they be found within your county, to be and appear before the judge of our circuit court, in chancery sitting, at a court to be holden at the court-house in and for the said county of Pulaski, on Monday, the twenty-seventh day of November, it being the last Monday in November next after the date hereof, then and there (together with the State of Arkansas, William Russell, the Real Estate Bank of the State of Arkansas, the trustees or assignees of said bank, Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, junior, Anthony H. Davis, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, Lorenzo N. Clark, John Drennen, and Robert S. Gibson, and Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, Charles P. Bertrand, John Wassell, John W. Cock,

Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, and William J. Byrd) to answer a bill in chancery, exhibited against them by Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor under twenty-one years of age, by Wiley Clayton, his guardian; and this they shall in no wise omit at their peril; and have you then and there this writ.

In testimony whereof, I, Herndon Haralson, clerk of the circuit court in and for the county of Pulaski, have hereunto set my [L. S.] hand and affixed the seal of said court, at my office, this 11th day of August, A. D. 1843.

HERNDON HARALSON, *Clerk*,
By J. A. HUTCHINGS, *D. C.*

Came to hand the 22d day of August, A. D. 1843.

JNO. J. HAMMETT,
Sheriff of Jefferson co., Ark.

Return.

I, John J. Hammett, sheriff of Jefferson county, in the State of Arkansas, do certify, that I executed this subpœna upon the within named John Morrison and William W. Daniel, on the 9th day of October, A. D. at the town of Pine Bluff, in Jefferson county, State of Arkansas, by then and there delivering to each one of them a true copy thereof. I further certify, that I executed the within subpœna upon the within named Edney Morrison, (wife of John Morrison,) on the 14th day of October, A. D. 1843, at the town of Pine Bluff, in Jefferson county, State of Arkansas, by then and there delivering to her a true copy thereof. Given from under my hand, the day and date last aforesaid.

JOHN J. HAMMETT,
Sheriff of Jefferson co., Ark's.

Service, - - - - -	$1 50
3 copies, - - - - -	75
	$2 25

Returned, filed, Nov. 7, 1843.

H. HARALSON, *Clerk*,
By J. THOMPSON, *D. C.*

STATE OF ARKANSAS, *County of Pulaski, sct:*

In the circuit court of said county.—In vacation.

Subpœna.

The State of Arkansas, to the sheriff of the county of Arkansas, greeting:

You are hereby commanded to summon William W. Daniel, and John Morrison and Edney, his wife, if they be found within your

county, to be and appear before the judge of our circuit court, in chancery sitting, at a court to be holden at the court-house in and for the said county of Pulaski, on Monday, the twenty-seventh day of November, it being the last Monday in November next after the date hereof, then and there (together with the State of Arkansas, William Russell, the Real Estate Bank of the State of Arkansas, the trustees and assignees of said bank, Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, junior, Anthony H. Davis, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, Lorenzo N. Clark, John Drennen, Robert S. Gibson, and Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, Charles P. Bertrand, John Wassell, John W. Cock, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton. Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, and William J. Byrd) to answer a bill in chancery exhibited against them by Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor under twenty-one years of age, by Wiley Clayton, his guardian; and this they shall in no wise omit at their peril; and have you then and there this writ.

In testimony whereof, I, Herndon Haralson, clerk of the circuit court in and for the county of Pulaski, have hereunto set my [L. S.] hand and affixed the seal of said court, at my office in Little Rock, this 11th day of August, A. D. 1843.

HERNDON HARALSON, *Clerk*,
By J. A. HUTCHINGS, *Deputy Clerk*.

Return.

Served this subpœna on the within named William W. Daniel, John Morrison and Edney, his wife, by handing each of them a true copy of the same, and explaining the contents thereof, at their residence in Arkansas county, Old River township, October the 3d, 1843.

JOHN L. JONES,
Sheriff of Arkansas county.

Service on 3, - - - -	75
60 circular miles, - - - -	1 80
Returned and filed, October 31, 1843.	$2 55

H. HARALSON, *Clerk*,
By J. A. HUTCHINGS, *D. C.*

STATE OF ARKANSAS, *County of Pulaski, sct:*

In the circuit court of said county.—In vacation.

Subpœna.

The State of Arkansas, to the sheriff of the county of Lafayette, greeting:

You are hereby commanded to summon James S. Conway, if he be

found within your county, to be and appear before the judge of our circuit court, in chancery sitting, at a court to be holden at the court-house in and for the said county of Pulaski, on Monday, the twenty-seventh day of November, it being the last Monday in November next after the date hereof, then and there (together with the State of Arkansas, William Russell, the Real Estate Bank of the State of Arkansas, the trustees or assignees of said Bank, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, junior, Anthony H. Davis, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, Lorenzo N. Clark, John Drennen, Robert S. Gibson, and Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, Charles P. Bertrand, John Wassel, John W. Cock, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, and William J. Byrd) to answer a bill in chancery exhibited against them by Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor under twenty-one years of age, by Wiley Clayton, his guardian; and this they shall in no wise omit at their peril; and have you then and there this writ.

In testimony whereof, I, Herndon Haralson, clerk of the circuit court in and for the county of Pulaski, have hereunto set my [L. S.] hand and affixed the seal of said court, at my office, this 11th day of August, A. D. 1843.

HERNDON HARALSON, *Clerk*,
By J. A. HUTCHINGS, *Deputy Clk.*

Return.

Served this subpœna by delivering a copy thereof to the within named James S. Conway, and informing him of the contents thereof, on the sixth day of September, A. D. 1843, in Roan township, Lafayette county, State of Arkansas.

Serving writ, - - - - 50 cts.
Mileage, 60 circular miles, at 3 cents per mile, $1 80

$2 30

JAMES A. CRATENS,
Sheriff of Lafayette county.

STATE OF ARKANSAS, *County of Pulaski, sct:*

In the circuit court of said county.—In vacation.

Subpœna.

The State of Arkansas, to the sheriff of the county of Hot Spring, greeting:

You are hereby commanded, as you have heretofore been commanded, to summon James S. Conway, if he be found within your county,

to be and appear before the judge of our circuit court, in chancery sitting, at a court to be holden at the court-house in and for the said county of Pulaski, on Monday, the twenty-seventh day of November, it being the last Monday of November next after the date hereof, then and there (together with the State of Arkansas, William Russell, the Real Estate Bank of the State of Arkansas, the trustees and assignees of said bank, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, junior, Anthony H. Davis, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, Lorenzo N. Clark, John Drennen, Robert S. Gibson, and Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, Charles P. Bertrand, John Wassell, John W. Cock, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, and William J. Byrd) to answer a bill in chancery exhibited against them by Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor under twenty-one years of age, by Wiley Clayton, his guardian; and this they shall in no wise omit at their peril; and have you then and there this writ.

In testimony whereof, I, Herndon Haralson, clerk of the circuit court in and for the county of Pulaski, have hereunto set my hand [L. S.] and affixed the seal of said court at my office, this 11th day of August, A. D. 1843.

HERNDON HARALSON, *Clerk*.
By J. A. HUTCHINGS, *Deputy*.

Return.

Came to hand, August the 17th, 1843.
E. CORRELY, *Sheriff of Hot Spring county*.

The within named James S. Conway is not to be found within my bailiwick, November 18th, A. D. 1843.

Fees, non est 25, mileage 90, $1.50.

E. CORRELY, *Sheriff of Hot Spring county, Ark*.

Returned and filed 28th Nov., 1843.

H. HARALSON, *Clerk*.

Filing replication—November 27th, 1843.

CLOYES' HEIRS, complainants,
vs.
THE STATE OF ARKANSAS, Wm. Russell, & al., defendants. } 71. In chancery.

Came the complainants, by their solicitor, and on their motion it is ordered that they have leave to file their replication to the answer of the Real Estate Bank of the State of Arkansas and its trustees, which replication is filed accordingly.

In the Pulaski circuit court, November term, A. D. 1843. In chancery.

Between Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor, by Wiley Clayton, his guardian, complainants, and the State of Arkansas, the Real Estate Bank of the State of Arkansas, and its trustees, Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, junior, Anthony B. Davis, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, John Drennen, Lorenzo N. Clark, and Robert S. Gibson, and others, defendants.

Replication.

The replication of the said complainants to the joint and several answers of the said Real Estate Bank of the State of Arkansas, and its said trustees, defendants.

These repliants, *saveing* and *reserveing* to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said Real Estate Bank of the State of Arkansas, and its said trustees, defendants as aforesaid, for replication thereto say, that they do and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the said answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by these repliants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove, as this honorable court shall direct; and pray as in and by their said bill they have already prayed.

FOWLER, *Solicitor for said complainants.*

Filed Nov. 27th, 1843. H. HARALSON, *Clerk.*
By J. THOMPSON, *D. C.*

Filing motion—November 29th, 1843.

CLOYES' HEIRS,
vs.
THE STATE OF ARKANSAS, Russell, Thorn, Conway, Hempstead, & others. } 71.

Came the defendants, Thomas Thorn, James S. Conway, and Samuel H. Hempstead, by their solicitors, and, on their motion, it is ordered that they have leave to file their motion for security for costs in this case, which motion is filed accordingly.

Motion for security for costs.

Pulaski circuit court, November term, A. D. 1843.

CLOYES' HEIRS, complainants,
vs.
THOMAS THORN, James S. Conway, and Samuel H. Hempstead, and others.

The said Thomas, James S., and Samuel H., move the court for a rule on the complainants in the above entitled cause, to give to said defendants security for costs; and this motion is grounded on the annexed affidavit.

HEMPSTEAD & JOHNSON.

STATE OF ARKANSAS, *Pulaski county, ss:*

I, Samuel H. Hempstead, do solemnly swear, that I am informed, and verily believe the information to be true, that the complainants, in the above entitled cause, are unable to pay the costs of said suit.

S. H. HEMPSTEAD.

Sworn to and subscribed before me, this 28th day of November, A. D. 1843.

H. HARALSON, *Clerk.*

Returned and filed, 29th Nov., 1843. H. HARALSON.

Order for security for cost.

December 14th, 1843.

CLOYES' HEIRS,
vs. 71.
THE STATE OF ARKANSAS and others.

Came the complainants, by their solicitor, and came also the State of Arkansas, and sundry other defendants, who have heretofore entered their appearances by their solicitors, and, on the several motions and affidavits for security for costs, it is ordered, that said complainants give security in the sum of five hundred dollars, conditioned according to law.

And thereupon, on motion, it is ordered that Absalom Fowler, esq., have leave to become security for costs in this case, and that he have leave to file his bond accordingly, which is done; whereupon it is ordered that said bond and security be approved.

Bond for costs.

Know all men by these presents, that I, Absalom Fowler, acknowledge myself to be held and firmly bound unto the State of Arkansas, William Russell, the Real Estate Bank of the State of Arkansas, the trustees or assignees of said Real Estate Bank of the State of Arkansas, to wit, Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, junior, Anthony H. Davis, Sandford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith,

James H. Walker, Lorenzo N. Clark, John Drennen, and Robert S. Gibson, and to Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, Charles P. Bertrand, John Wassell, John W. Cock, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, and John Morrison and Edney Morrison, his wife, in the sum of five hundred dollars, lawful money; for the payment whereof, well and truly to be made, I bind myself, my heirs, executors, and administrators hereby.

Witness my hand and seal, this fourteenth day of December, in the year of our Lord one thousand eight hundred and forty-three.

Conditioned, that whereas Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor under twenty-one years of age, by Wiley Clayton, his guardian, have instituted a suit in chancery in the circuit court of Pulaski county, in the State of Arkansas, against the said above named obligees in this bond, and the said court in chancery sitting has ordered and adjudged that the said complainants in said suit give security for the payment of the costs thereof. Now, if I shall well and truly pay all costs which have accrued, or which may accrue, in such suit, then this obligation to be void.

A. FOWLER. [SEAL.]

Filed Dec. 14th, 1843.

H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Interlocutory decree.

December 14th, A. D. 1843.

CLOYES' HEIRS,
vs.
THE STATE OF ARKANSAS & others. } 71.

Came the said complainants, by their solicitor, and one of them, the said Nathan H., by Wiley Clayton, his guardian, and on their motion it appearing to the satisfaction of the court that the said defendants, John Percefull, Henry F. Pendleton, John H. Leech, William W. Daniel, and John Morrison and Edney Morrison, his wife, have been duly served with a subpœna in this case thirty days before the return thereof, and have wholly failed to file exceptions, plead, demur, or answer the said bill of complaint exhibited against them, it is ordered, adjudged, and decreed, by the court here, that the said bill so exhibited be, and the same is hereby, taken as confessed against the said John Percefull, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William W. Daniel, and John Morrison and Edney, his wife.

Interlocutory decree set aside.

December 15th, A. D. 1843.

CLOYES' HEIRS
vs.
THE STATE OF ARKANSAS & al. } 71. In chancery.

Came the complainants, by their solicitor, and came also the defendants, John Morrison and Edney, his wife, and on motion, and by consent, it is ordered, that so far as regards the said Morrison and wife the decree pro confesso be set aside. And came the State of Arkanses, by her solicitors, and on her motion it is ordered that she have leave to file her demurrer in this case, which is filed accordingly.

Filing demurrers.

And came said Chester Ashley, by his solicitor, and on his motion it is ordered that he have leave to file his demurrer in this case, which is filed accordingly.

And came said William E. Woodruff, by his solicitor, and on his motion it is ordered that he have leave to file his demurrer in this case, which is filed accordingly.

And came said George C. Watkins, by his solicitor, and on his motion it is ordered that he have leave to file his demurrer in this case, which is filed accordingly.

Answers.

And came said James S. Conway, by his solicitor, and on his motion it is ordered that he have leave to file his answer in this case, which is filed accordingly.

And came Samuel H. Hempstead, by his solicitor, and on his motion it is ordered that he have leave to file his answer, which is filed accordingly.

Demurrer of State.

In the Pulaski circuit court, sitting as a court of chancery, at the November term thereof, 1843.

The separate demurrer of the State of Arkansas, one of the defendants to the bill of complaint of Robinson Lytle and Lydia Louisa, his wife, Elias Hooper and Mary E., his wife, and Nathan H. Cloyes, a minor, by his guardian, Wiley Clayton, complainants.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true in such manner and form as the same is therein and thereby set forth and alleged, doth demur in law to said bill, and for causes of demurrer sheweth:

1st. The proof of pre-emption, as set forth in said bill and exhibits, was not taken in presence of the register and receiver, agreeable to the rules prescribed by the Commissioner of the General Land Office.

2d. The bill shows on its face and exhibits that said Cloyes, in his lifetime, was not the settler or occupier of the N. W. and N. E. frl. qrs. of sec. 2, and the N. W. and N. E. frl. qrs. of sec. 1, T. 1 N., R. 12 west.

3d. The bill claims a pre-emption on the N. W. and N. E. frl. qrs. of sec. 1, T. 1 N., R. 12 W., which are not adjoining fractions to the N. W. frl. qr. of section 2, on which the improvement is alleged to have been made by said Cloyes.

4th. The bill claims three fractions, besides the N. W. frl. qr. of sec. 2, without showing that the improvement of said Cloyes extended on them; but, on the contrary, showing that said improvement was confined to the N. W. frl. qr. of sec. 2; and said claim to a right of pre-emption, as shown by said bill, is therefore contrary to express law, and to the instructions of the General Land Office.

5th. The claim, as shown by said bill and certificate, is for four fractions, when by law only one could have been entered.

6th. The certificate granted by the receiver of the land office at Little Rock was wholly unauthorized, and contrary to law, being for 4 fractions, when by law it could have been issued for only one.

7th. The receiver's certificate exceeds the grant of pre-emption, and is therefore void

8th. The pre-emption having been granted for N. W. frl. qr. sec. 2, T. 1 N., R. 12 W., and the privilege of entering adjoining fractions rejected, that grant was conclusive until reversed by the General Land Office, and no certificate could be granted for other, or more, or different lands.

9th. The receiver at Little Rock issued the certificate, set forth as exhibit B in complainants' bill, wholly without authority, and contrary to law; and the same is null and void.

10th. Patents having issued, no subsequent act could have been done by the General Land Office, or the district land office, until such patents had been vacated by scire facias, or otherwise, at the suit of the United States; the title having passed from the United States, was wholly beyond the control of any department of the Government except the judiciary.

11th. The bill shows on its face a patent to Gov. Pope for the N. W. frl. qr. of sec. 2, and to William Russell for the residue, by virtue of a different act of Congress, and the said claim of Cloyes could not extend to or over any portion patented to Russell; it does not appear under which patent the defendants claim, or are alleged to claim; and therefore said parties could not be joined.

12th. The bill fails to show what lands are claimed by the complainants, whether north or south of the Arkansas river, or east or west of the Quapaw line, and the certificate for the same reason is void.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant doth demur to said bill, and to all the matters and things therein contained; and prays the judgment of the honorable court whether she shall be compelled to make any further or

other answer to said bill; and she humbly prays to be hence dismissed with her reasonable costs in this behalf sustained.

GEO. C. WATKINS,
Attorney General.

Filed December 15, 1843.

H. HARALSON, *Clerk.*
By J. THOMPSON, *D. C.*

Demurrer of Ashley.

In the Pulaski circuit court, sitting as a court of chancery, at the November term thereof, 1843.

The separate demurrer of Chester Ashley, one of the defendants to the bill of complaint of Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor, by his guardian, Wiley Clayton, complainants.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to the said bill, and for causes of demurrer sheweth:

1st. The proof of pre-emption, as set forth in bill and exhibits, was not taken in presence of the register and receiver, agreeable to the rules prescribed by the Commissioner of the General Land Office.

2d. The bill shows on its face and exhibits that said Cloyes, in his lifetime, was not the settler and occupier of the N. W. and N. E. frl. qrs. of sec. 2, and the N. W. and N. E. frl. qrs. of sec. 1, T. 1 N., R. 12 west.

3d. The bill claims a pre-emption on the N. W. and N. E. frl. qrs. of sec. 1, T. 1. N., R. 12 W., which are not adjoining fractions to the N. W. frl. qr. sec. 2, on which the improvement is alleged to have been made by said Cloyes.

4th. The bill claims three fractions besides the N. W. frl. qr. sec. 2, without showing that the improvements of said Cloyes extended on them; but, on the contrary, showing that said improvement was confined to the said N. W frl. qr. of sec. 2; and said claim to a right of pre-emption, as shown by said bill, is therefore contrary to express law, and to the instructions of the General Land Office.

5th. The claim, as shown by said bill and certificate, is for four fractions, when by law only one could have been entered.

6th. The certificate granted by the receiver of the land office at Little Rock was wholly unauthorized, and contrary to law, being for 4 fractions, when by law it could have been issued for one only.

7th. The receiver's certificate exceeds the grant of pre-emption, and is therefore void.

8th. The pre-emption having been granted for the N. W. frl. qr. of sec. 2, T. 1 N., R. 12 W., and the privilege of entering adjoining fractions rejected, that grant was conclusive until reversed by the General

Land Office, and no certificate could be granted for other, or more, or different lands.

9th. The receiver at Little Rock issued the certificate, set forth as exhibit B in complainants' bill, wholly without authority, and contrary to law, and the same is null and void.

10th. Patents having issued, no subsequent act could have been done by the General Land Office, or district land office, until such patents had been vacated by scire facias, or otherwise, at the suit of the United States; the title having passed from the United States, was wholly beyond the control of any department of the Government, except the judiciary.

11th. The bill shows on its face a patent to Gov. Pope for N. W. frl. qr. of sec. 2, and to William Russell for the residue, by virtue of a different act of Congress; and the said claim of Cloyes could not extend to or over any portion patented to Russell; it does not appear under which patent the said parties defendants claim, or are alleged to claim; and therefore said parties could not be joined.

12th. The bill fails to show what lands are claimed by the complainants, whether north or south of the Arkansas river, or east or west of the Quapaw line; and the certificate for the same reason is void.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant doth demur to said bill, and to all the matters and things therein contained; and prays the judgment of this honorable court, whether he shall be compelled to make any further or other answer to said bill; and he humbly prays to be hence dismissed, with his reasonable costs in this behalf sustained.

ASHLEY & WATKINS.

Filed December 15, 1843.

H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Demurrer of Woodruff.

In the Pulaski circuit court, sitting as a court of chancery, at the November term thereof, 1843.

The separate demurrer of William E. Woodruff, one of the defendants to the bill of complaint of Robinson Lytle and Lydia Louisa, his wife, Elias Hooper and Mary E., his wife, and Nathan H. Cloyes, by his guardian, Wiley Clayton, complainants.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to said bill, and, for causes of demurrer, sheweth:

1st. The proof of pre-emption, as set forth in said bill and exhibits, was not taken [in] presence of the register and receiver, agreeable to the rules prescribed by the Commissioner of the General Land Office.

2d. The bill shows on its face and exhibits that said Cloyes, in his

lifetime, was not the settler or occupier of the N. W. and N. E. frl. qrs. of sec. 2, and the N. W. and N. E. frl. qrs. of sec. 1, T. 1 N., R. 12 west.

3d. The bill claims a pre-emption on the N. W. and N. E. frl. qrs. of sec. 1, T. 1 N., R. 12 W., which are not adjoining fractions to the N. W. frl. qr. of section 2, on which the improvement is alleged to have been made by said Cloyes.

4th. The bill claims three fractions, besides the N. W. frl. qr. of sec. 2, without showing that the improvement of said Cloyes extended on them; but, on the contrary, showing that said improvement was confined to the N. W. frl. qr. of sec. 2; and said claim to a right of pre-emption, as shown by said bill, is therefore contrary to express law, and to the instructions of the General Land Office.

5th. The claim, as shown by said bill, is for four fractions, when by law only one could have been entered.

6th. The certificate granted by the receiver of the land office at Little Rock was wholly unauthorized, and contrary to law, being for 4 fractions, when by law it could have been issued for one only.

7th. The receiver's certificate exceeds the grant of pre-emption, and is therefore void.

8th. The pre-emption having been granted for the N. W. frl. qr. of sec. 2, T. 1 N., R. 12 W., and the privilege of entering adjoining fractions rejected, that grant was conclusive until reversed by the General Land Office; and no certificate could be granted for other, or more, or different lands.

9th. The receiver at Little Rock issued the certificate, set forth as exhibit B in complainants' bill, wholly without authority, and contrary to law, and the same is null and void.

10th. Patents having issued, no subsequent act could have been done by the General Land Office, or the district land office, until such patents had been vacated by scire facias, or otherwise, at the suit of the United States; the title having passed from the United States, was wholly beyond the control of any department of the Government, except the judiciary.

11th. The shows on its face a patent to Gov. Pope, for the N. W. frl. qr. of sec. 2, and to William Russell for the residue by virtue of a different act of Congress, and the said claim of Cloyes could not extend to, or over any portion patented to Russell; it does not appear by said bill under which patent the defendants claim, or are alleged to claim, and therefore said parties could not be joined.

12th. The bill fails to show what lands are claimed by the complainants, whether north or south of the Arkansas river, or east or west of the Quapaw line, and the certificate for the same reason is void.

Wherefore, and for divers other good causes of demurer appearing in said bill of complaint, this defendant doth demur to said bill, and to all the matters and things in said bill contained, and prays the judgment of this honorable court, whether he shall be compelled to make any fur-

ther or other answer to said bill, and he humbly prays to be hence dismissed, with his reasonable costs in this behalf sustained.

ASHLEY & WATKINS.

Filed December 15, 1843.

H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Demurrer of Watkins.

In the Pulaski circuit court, sitting as a court of chancery, at the November term thereof, 1843.

The separate demurrer of George C. Watkins, one of the defendants to the bill of complaint of Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathaniel H. Cloyes, a minor, by his guardian, Wiley Clayton, complainants.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to said bill, and for cause [of] demurrer sheweth:

1st. The proof of pre-emption, as set forth in bill and exhibits, was not taken in presence of the register and receiver, agreeable to the rules prescribed by the Commissioner of the General Land Office.

2d. The bill shows on its face and exhibits that said Cloyes was not the settler or occupier of the N. W. and N. E. frl. qrs. sec. 2, and the N. W. and N. E. frl. qrs. of section 1, T. 1 N., R. 12 west.

3d. The bill claims a pre-emption on the N. W. and N. E. frl. qrs. of sec. 1, T. 1 N., R. 12 W., which are not adjoining fractions to the N. W. frl. qr. of sec 2, on which the improvement is alleged to have been made by said Cloyes.

4th. The bill claims three fractions, besides the N. W. frl. qr. of sec. 2, without showing that the improvement of said Cloyes extended on them; but, on the contrary, showing that said improvement was confined to the N. W. frl. qr. of sec. 2, and said claim to a right of pre-emption, as shown by said bill, is therefore contrary to express law, and to the instructions of the General Land Office.

5th. The claim, as shown by said bill and certificate, is for four fractions, when by law only one could have been entered.

6th. The certificate granted by the receiver of the land office at Little Rock was wholly unauthorized, and contrary to law, being for four fractions, when by law it could have been issued for one only.

7th. The receiver's certificate exceeds the grant of pre-emption, and is therefore void.

8th. The pre-emption having been granted for the N. W. frl. qr. of sec. 2, T. 1 N., R. 12 W., and the privilege of entering adjoining fractions [rejected,] that grant was conclusive until reversed by the General Land Office, and no certificate could be granted for other, or more, or different lands.

9th. The receiver at Little Rock issued the certificate set forth as ex-

ter of section two, and for which a patent was duly issued by the Government of the United States to the said governor of the Territory of Arkansas, and his successors in office, in trust for the benefit of said territory, for the purpose of erecting said court-house and jail at Little Rock, on the second day of November, A. D. 1833; which said patent is not in the possession or under the control of this respondent, and he cannot therefore produce the same to this honorable court. And this respondent further says, that, by virtue of a subsequent act of Congress, entitled "An act to authorize the governor of the Territory of Arkansas to sell the land granted to said territory by act of Congress approved the 15th day of June, 1832," and for other purposes, approved March 2d, 1833, the said governor, among other things, was fully authorized and empowered to lay off into town lots so much of the said grant of one thousand acres of land as he might deem advisable so to be appropriated, and to sell the same, from time to time, as the public interest might require, and to execute deeds therefor upon the payment of the purchase money; and the said northwest fractional quarter of section two was laid off into town lots and blocks, under the superintendence of the said John Pope, he still being governor, as an addition to the city of Little Rock; and on the 4th Monday of October, A. D. 1833, was sold at public auction to divers persons; and this respondent, at such sale, purchased for the valuable consideration mentioned in his deed, that is to say, seven hundred and sixty-seven dollars, the following lots or parcels of ground; and the same being portions of said N. W. fr. qr. of sec. 2, viz., lots one, two, three, four, five, six, eleven, and twelve, in block or square No. seven, of which he is now possessed in fee simple; and that this respondent, having paid the purchase money for these lots, (and for others in said block seven, disposed of and sold by this respondent,) he received for said lots, among others, a deed made by the said John Pope, as such governor as aforesaid, conveying the same in fee simple to this respondent, bearing date the 3d day of March, A. D. 1835, acknowledged and duly recorded in Pulaski county, in the recorder's office, on the 3d day of March, 1835; a certified copy whereof will hereafter be filed, if necessary, and to be marked as exhibit A of this answer, and taken as a part hereof. And this respondent further says, that Thomas Thorn also purchased at said sale lots four, five, six, and eight, in block No. ten, being also part and parcel of said N. W. frl. qr. of sec. 2, and received from the proper authority a deed, dated the 9th day of March, 1835, conveying the same to Thorn in fee simple, which was acknowledged and duly recorded in said office the 9th day of March, A. D. 1835; and that this respondent purchased of said Thorn and wife, by deed bearing date the 24th day of March, A. D. 1837, the last mentioned lot, and that this respondent is now the legal owner thereof; which last mentioned deed was acknowledged and duly recorded in said office the 31st day of March, A. D. 1837; and, if the court shall so order, this respondent will procure copies of said deeds to Thorn, and of Thorn to this respondent, to be attached as exhibits B and C of this answer, and to be taken as part hereof; all of which said

lots are situate east of the Quapaw line, in what is generally known as Governor Pope's addition to the city of Little Rock. And this respondent further says, that, at the time of the said purchases respectively, and the receiving and recording of said deeds respectively, he did not know that there was any bona fide adverse claim or right to said lots, or any of them; and he avers that he is an innocent purchaser for a valuable consideration, and without actual or implied notice, except as hereinafter stated.

This respondent, further answering, expressly and positively denies that the selection or location of said northwest fr. qr. of sec. 2 as aforesaid, and under the authority aforesaid, was illegally made, or made through mistake, or in prejudice of any vested right of the said Nathan Cloyes or said complainants, or any or either of them, because this respondent repeats that the pre-emption claim or right of said Nathan Cloyes, and that of said complainants derived through him, were and are pretended and fraudulent, and ought not to prevail against an innocent purchaser; and this respondent expressly denies that the patent which was issued for said N. W. fr. qr. of sec. 2 was issued or received subject to any vested right in and to said parcels of land in the said Nathan Cloyes or said complainants; and also denies that this respondent purchased or received his title to the said lots in full knowledge of any prior equitable or vested right in said complainants to the same as alleged in said bill, or that he was a purchaser with full notice in fact and in law of any such prior and vested right as stated by the complainants; but this respondent admits that he has occasionally heard (what he believes to be) this claim spoken of as the "Cloyes' claim," but always with the qualification that it was invalid, fraudulent, and void, and had been rejected by the Government of the United States for that reason, and was good for nothing; and this respondent is unable to state when he heard this claim first spoken of; and this is all the notice in fact that this respondent ever had of said claim, to the best of his recollection.

This respondent further answering says, that he does not know whether the said Nathan Cloyes departed this life as stated in said bill, nor has he any knowledge who are his heirs at law, nor whether William Thomas Cloyes was one of them, nor whether the said William departed this life without ever *learning* the persons mentioned in said bill, his exclusive heirs at law, and he demands proof of these several allegations; and this respondent has no knowledge of the payment of the said sum of money by the hands of Ben Desha, as alleged in the bill, save what appears in the face of said bill, and exhibit B thereto attached, but he believes such payment was made on or about the 5th of March, 1834; the certificate mentioned in said bill, then granted by the receiver of public moneys at Little Rock, and the endorsement on the back thereof made by such receiver by the direction of the Commissioner of the General Land Office; but this respondent utterly denies that such payment and the granting of said certificate was a recognition of any prior or vested right in said Nathan Cloyes, or the complainants, to said

N. W. frl. qr. of sec. 2; and that the receiver at Little Rock was instructed, on the 2d of November, 1833, by the proper authority at Washington city, to receive said sum of money, give the appropriate evidence thereof, and to make the endorsement aforesaid on the back of the certificate, for the sole and exclusive purpose of enabling said pretended and fraudulent pre-emption claim to be investigated and adjudicated in some proper tribunal.

This respondent further answering says, that, long before the time the said money was directed to be received and said certificate given, the said John Pope, as governor of the Territory of Arkansas, by virtue of the authority aforesaid, had selected and located the said northwest fractional quarter of section 2, and that such selection and location was recognised to be good and valid by the proper authority, thereby vesting in said governor, as trustees for the said territory, for the uses and purposes aforesaid, the fee simple to the said parcel of land, the said pretended pre-emption claim to the contrary notwithstanding.

This respondent further answering says, that the said act of Congress, entitled "An act granting to the Territory of Arkansas one thousand acres of land for the erection of a court-house and jail at Little Rock, approved June 15, 1832, was an absolute grant in fee simple for the purposes therein mentioned, without any further legislative action, and ex vi termini appropriated and granted to the said territory the said N. W. fr. qr. of sec. 2; which act was of a prior date to the supplemental pre-emption act mentioned in said bill.

This respondent further says, that the said Nathan Cloyes, on the 19th day of April, A. D. 1831, entered into a covenant or agreement to and with one Ben Desha, and thereby, in consideration of the said Desha's defraying the necessary expenses incident to proving up and establishing said pre-emption right of said Cloyes to said N. W. frl. qr. of sec. 2, and paying the minimum price therefor per acre, be the quantity more or less, that he, said Nathan Cloyes, would convey to said Ben Desha one half of said pre-emption right; which deed was duly recorded in said recorder's office on the seventeenth day of February, A. D. 1838; which said agreement or covenant was made and concluded before the said pretended pre-emption right of said Nathan Cloyes was proven up at the land office at Batesville, under said act of Congress of May 29th, A. D. 1830; and by virtue of which said agreement or covenant, and of said act of Congress of May 29th, 1830, granting pre-emption rights to settlers on the public lands, the said Nathan Cloyes divested himself of all right, if any he ever had, of proving up a pre-emption to said N. W. fr. qr. of sec. 2, or at least to one-half part thereof, and that the same, so proven up as aforesaid, was illegal and invalid. And this respondent further says, that the said Ben Desha, long before the institution of this suit by the complainants, in his lifetime fully complied with his part of said covenant or agreement, and that said Ben Desha, many years before the exhibiting of said bill, departed this life, leaving several persons heirs at law, whose names this respondent does not know, but who ought to be parties to said bill.

This respondent denies all manner of unlawful combination and confederacy in the said bill charged against him, without that, that there is any other matter or thing in the complainants' said bill of complaint contained, material or effectual for the defendant to make answer unto, confessed or avoided, traversed or denied, is true, to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver, maintain, and prove, as this honorable court shall award; and humbly prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

HEMPSTEAD & JOHNSON, *Solicitors.*

STATE OF ARKANSAS, *Pulaski county, ss:*

I, James S. Conway, do solemnly swear, that the matters and things set forth in the foregoing answer, so far as stated on my own knowledge, are true, and so far as stated on the information of others I believe to be true, so help me God

JA. S. CONWAY.

Subscribed and sworn to, this seventh day of December, A. D. 1843.

ELI COLLY,
Mayor of the city of Little Rock.

Subscribed and sworn to, this eighth day of December, A. D. 1843.

JAS. D. FITZGERALD, *J. P.*

Filed December 15th, 1843.

H. HARALSON, *Clerk.*
By J. THOMPSON, *D. C.*

Answer of Hempstead.

Pulaski circuit court. November term, 1843.

PULASKI, *ss:*

The separate answer of Samuel A. Hempstead, to a bill of complaint exhibited in said court by Cloyes' heirs, &c.

This respondent, saving and reserving, &c., for answer admits, that the said Nathan Cloyes made proof of a pre-emption right or claim to the N. W. fr. qr. of sec. 2, town. 1 north, range 12 west, at the time and in the mode and manner mentioned in exhibit A of said bill; but the respondent, on information which he believes to be true, expressly and positively denies that the said Nathan had a valid right of pre-emption thereto at that time, or any subsequent period, under either or both of the pre-emption acts of Congress mentioned in said bill, and that said pre-emption right was fraudulently proved up, and was null and void, and that the same was allowed in violation of law.

This respondent denies that the said Nathan made application to enter the same, or tendered the minimum price therefor, as stated in the bill, and demands proof thereof; and the respondent also denies that the said tract of land was subject to sale at the time of proving up of said fraudulent pre-emption, and that the allowance of said pre-emption thereto was

null and void, and conferred no right on the said Nathan or said complainants.

This respondent further says, that by an act of Congress, entitled "an act granting to the Territory of Arkansas one thousand acres of land for the erection of a court-house and jail at Little Rock," approved June 15th, 1832, the governor of the territory was authorized to select one thousand acres adjoining and contiguous to Little Rock, in legal subdivisions, which John Pope, afterwards, viz., January 30th, 1833, as governor of the said territory, caused to be done, and as part thereof selected and located the said N. W. fr. qr. of sec. 2, town. 1 N., of 12 west, and which was patented to the said governor of the Territory of Arkansas, &c., in trust for the said territory, for the purposes mentioned in the act on the 2d of November, 1833; but this respondent denies that the said location, or the issuance of said patent, or either of them, were done through mistake or in prejudice of any valid and bona fide right in the said Nathan or said complainants, or that said location or patent, or either of them, were illegal, or that the patent was received subject to any equity as stated in the bill, which patent is not in the possession of this respondent, and cannot be produced, nor a copy thereof.

This respondent further says, that the said John Pope, as governor of said territory, caused the said N. W. fr. qr. of sec. 2, in township 1 north, of range 12 west, to be laid off into town lots under the authority of the act mentioned in said bill, approved March 2d, 1833, and that he sold the same from time to time, and made deeds therefor; and that the respondent purchased of George C. Watkins, for the consideration of $4,835, lots 9 and 10, in block 3, by deed, dated May 31st, 1841, acknowledged and duly recorded in the recorder's office of Pulaski county, on the 7th of June, A. D. 1841, which said lots are part and parcel of the said N. W. fr. qr. of sec. 2, township 1 north, of range 12 west, so selected and patented as aforesaid; and this respondent is now possessed thereof in fee simple; the claim of title to which, from the governor of the said territory down to this respondent, will be exhibited if the court shall so require, as well as a copy of said deed from Watkins to the respondent, and to be taken as a part hereof.

This respondent expressly denies, that, at the time of the purchase of said lots, or the recording of said deed, he had notice, either in fact or law, of the claim of the said Nathan or said complainants to the parcels of land first herein mentioned, and that he does not remember to have heard the claim spoken of until after the institution of the said suit, and that it was generally characterized as fraudulent and void when mentioned; and the respondent denies that he received his title subject to any right or equity in the said Nathan or said complainants.

The respondent does not know whether the said Nathan departed this life, or whether said William departed this life, as stated; nor does he know who were, or are, their heirs at law respectively; nor does he know of the payment by Ben Desha, mentioned in the bill, except from the statement in the bill; and that on each of these points he demands

proof, and also demands proof of all allegations not admitted by this respondent.

This respondent further says, that the said Nathan, on the 19th of April, 1831, entered into a covenant to said Ben Desha, to convey to him one-half of said pre-emption right, on certain considerations and conditions therein mentioned, which this respondent believes were complied with by said Desha in all due time; and that said Ben Desha departed this life before the institution of this suit, leaving several persons his heirs at law, whose names your respondent does not know; a copy of which said covenant the respondent will file hereafter, and to be taken as part thereof. And this respondent, having fully answered, prays to be hence dismissed, with his costs in this behalf.

HEMPSTEAD & JOHNSON, *Solicitors.*

PULASKI, *sct:*

I, Samuel H. Hempstead, solemnly swear, that the facts stated in said answer, on my own knowledge, are true, and those stated on information I believe to be true, so help me God.

S. H. HEMPSTEAD.

Sworn to and subscribed, this 15th of December, 1843.

H. HARALSON, *Clerk.*
By J. THOMPSON, *D. C.*

Filed December 15th, 1843.

H. HARALSON, *Clerk.*
By J. THOMPSON, *D. C.*

December 18th, 1843. In chancery.

Filing demurrer.

CLOYES' HEIRS,
vs. } 71.
THE STATE OF ARKANSAS and al.

Came the defendants, Trapnall, Cock, Wassell, Pitcher, Walters, Robins, Richard C. Byrd, and Wm. J. Byrd, by their solicitor, and, on their motion, it is ordered that they have leave to file their demurrer to the complainants' bill in this case, which is filed accordingly.

Replication.

And on motion of the complainants, by their solicitor, it is ordered, that they have leave to file their replication to the answer of said James S. Conway, which is filed accordingly.

And on motion of the complainants, by their solicitor, it is ordered, that they have leave to file their replication to the answer of said Samuel H. Hempstead, which is filed accordingly.

Demurrer of Trapnall and others.

In the Pulaski circuit court, sitting as a court of chancery, at the November term thereof, 1843.

The joint and several demurrer of Frederic W. Trapnall, John W. Cock, John Wassell, James Pitcher, Ebenezer Walters, John Robins, Richard C. Byrd, and William J. Byrd.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to said bill, and for cause of demurrer sheweth :

1st. The proof of the pre-emption as set forth in bill and exhibits was not taken in presence of the register and receiver, agreeable to the rules prescribed by the General Land Office.

3d. The bill claims *claims* a pre-emption on the N. W. and N. E. frl. qrs. of sec. 1, T. 1 N., R. 12 W, which are not adjoining fractions to the N. W. frl. qr. of section 2, on which the improvement is alleged to have *be* made by said Cloyes.

2d. The bill shows on its face and exhibits that said Cloyes, in his lifetime, was not the settler or occupier of the N. W. and N. E. frl. qrs. of sec. 2, and the N. W. and N. E. frl. qrs. of sec. 1, T. 1 N., R. 12 west.

4th. The bill claims three fractions besides the N. W. frl. qr. of sec. 2, without showing that the improvements of said Cloyes extended on them; but, on the contrary, showing that said improvement was confined to the N. W. fr. qr. of sec. 2, and said claim to a right of pre-emption, as shown by said bill, is therefore contrary to express law, and to the instructions of the General Land Office.

5th. The claim, as shown by said bill and certificate, is for four fractions, when by law only one could have been entered.

6th. The certificate granted by the receiver of the land office at Little Rock was wholly unauthorized and contrary to law, being for 4 fractions, when it could have been for one only.

7th. The receiver's certificate exceeds the grant of pre emption, and is therefore void.

8th. The pre-emption having been granted for the N. W. fr. qr. sec. 2, T. 1 N., R. 12 W., and the privilege of entering adjoining fractions rejected, that grant was conclusive until reversed by the General Land Office, and no certificate could be granted for other.

9th. The receiver at Little Rock issued the certificate, set forth as exhibit B in complainants' bill, wholly without authority and contrary to law, and the same is null and void.

10th. Patents having issued, no subsequent act could have been done by the General Land Office, or the district land office, until such patents had been vacated by scire facias, or otherwise, at the suit of the United States; the title having passed from the United States, was whol-

ly beyond the control of any department of the Government, except the judiciary.

11th. The bill shows on its face a patent to Governor Pope for the northwest fractional quarter of section two, and to William Russell for the residue, by virtue of a different act of Congress, and the said claim of Cloyes could not extend to or over any portion patented to Russell; it does not appear under which patent the defendants claim, or are alleged to claim, and therefore said parties could not be joined.

12th. The bill fails to show what lands are claimed by the complainants, whether north or south of the Arkansas river, or east of the Quapaw line, and the certificate for the same reason is void.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, these defendants do*th* demur to said bill, and to all the matters and things therein contained, and pray the judgment of this honorable court whether they shall be compelled to make any further or other answer to said bill, and they humbly pray to be dismissed, with their reasonable costs in this behalf sustained.

TRAPNALL AND COCK.

Filed December 18, 1843.

H. HARALSON, *Clerk.*
By J. THOMPSON, *Dep. Clerk.*

In the Pulaski circuit court, November term, 1843.

ROBINSON LYTLE and LYDIA LOUISA LYTLE, his wife, and others, complainants,
vs.
THE STATE OF ARKANSAS, William Russell, and others, defendants.

In chancery.

Replication to Conway's answer.

The replication of the said complainants to the answer of James S. Conway, one of said defendants.

These repliants, saving and reserving to themselves all manner of advantage of exceptions which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said James S., for replication thereunto say, that they have and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said James S. is very uncertain, evasive, and insufficient in the law to be replied unto by these repliants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove as this honorable court shall direct, and pray as in and by their bill they have already prayed.

FOWLER, *Solicitor for complainants.*

Filed December 18, 1843.

H. HARALSON, *Clerk.*
By J. THOMPSON, *Dep. Clerk.*

In the Pulaski circuit court, November term, 1843.

ROBINSON LYTLE and LYDIA LOUISA LYTLE, his wife, and others, complainants,
versus
THE STATE OF ARKANSAS, William Russell, and others, defendants.

In chancery.

Replication to Hempstead's answer.

The replication of the said complainants to the answer of Samuel H. Hempstead, one of said defendants.

These repliants, saving and reserving to themselves all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said Samuel H., for replication thereunto say, that they have and will aver, maintain, and prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said Samuel H. is very uncertain, evasive, and insufficient in the law to be replied unto by these repliants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain, and prove, as this honorable court shall direct, and pray as in and by their bill they have already prayed.

FOWLER, *Solicitor for complainants.*

Filed December 18, 1843.

H. HARALSON, *Clerk.*
By J. THOMPSON, *Dep. Clerk.*

In chancery, December 19, 1843.

CLOYES' HEIRS
vs.
THE STATE OF ARKANSAS and others. } 71.

Filing demurrer.

Come the defendants, John Morrison and Edney, his wife, by their solicitor, and, on their motion it is ordered, that they have leave to file their demurrer to the complainants' bill, which is filed accordingly.

Filing disclaimer.

And came the defendant, William P. Officer, by his solicitor, and, on his motion, it is ordered that he have leave to file his disclaimer in this case, which is filed accordingly.

Demurrer of Morrison and wife.

In the Pulaski circuit court, sitting as a court of chancery, at the November term thereof, 1843.

The separate demurrer of John Morrison and Edney, his wife, two of the defendants to the bill of complaint of Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, by his guardian, Wiley Clayton, complainants.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to said bill, and for causes of demurrer sheweth:

1st. The proof of the pre-emption as set forth in bill and exhibits was not taken in presence of the register and receiver, agreeable to the rules prescribed by the General Land Office.

2d. The bill shows on its face and exhibits that said Cloyes in his lifetime was not the settler or occupier of the northwest and northeast fractional quarters of section two, and the northwest and northeast fractional quarters of section one, township one north, range 12 west.

3d. The bill claims a pre-emption on the northwest and northeast fractional quarters of section one, township one north, range 12 west, which are not adjoining fractions to the northwest fractional quarter of section two, on which the improvement is alleged to have been made by said Cloyes.

4th. The bill claims three fractions besides the northwest fractional quarter of section two, without showing that the improvement of said Cloyes extended on them; but, on the contrary, showing that said improvement was confined to the northwest fractional quarter of section two, and said claim to a right of pre-emption, as shown by said bill, is therefore contrary to express law, and to the instructions of the General Land Office.

5th. The claim as shown by said bill and certificate is for four fractions, when by law only one could have been entered.

6th. The certificate granted by the receiver of the land office at Little Rock was wholly unauthorized, and contrary to law, being for four fractions, when it could have been for one only.

7th. The receiver's certificate exceeds the grant of pre-emption, and is therefore void *void*.

8th. The pre emption having been granted for the northwest fractional quarter of section two, township one north, range 12 west, and the privilege of entering adjoining fractions rejected, that grant was conclusive until reversed by the General Land Office, and no certificate could be granted, for other, or more, or different lands.

9th. The receiver at Little Rock issued the certificate, set forth as exhibit B in complainants' bill, wholly without authority and contrary to law, and the same is null and void.

10th. Patents having issued, no subsequent act could have been done

by the General Land Office, or the district land office, until such patents had been vacated by scire facias, or otherwise, at the suit of the United States; the title having passed from the United States, was wholly beyond the control of any department of the Government, except the judiciary.

11th. The bill shows on its face a patent to Governor Pope for the northwest fractional quarter of section two, and to William Russell for the residue, by virtue of a different act of Congress, and the said claim of Cloyes could not extend to and over any portion patented to Russell; it does not appear under which patent the defendants claim, or are alleged to claim, and therefore said parties could not be joined.

12th. The bill fails to show what lands are claimed by the complainants, whether north or south of the Arkansas river, or east or west of the Quapaw line, and the certificate for the same reason is void.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, these defendants doth demur to said bill, and to all the matters and things therein contained, and prays the judgment of this honorable court, whether they shall be compelled to make any further or other answer to said bill; and they humbly pray to be hence dismissed, with their reasonable costs in this behalf sustained.

ASHLEY AND WATKINS.

Filed 19th December, 1843.

H. HARALSON, *Clerk*.

Disclaimer by Officer.

CLOYES' HEIRS
vs.
WILLIAM P. OFFICER and others.

In chancery.

And the said Officer comes and disclaims any interest in the lands in said bill described, and has no interest therein, and makes no answer to the allegation of the said bill in relation thereto, denies all combination and confederation, &c.

TRAPNALL & COCK.

Sworn to by William P. Officer in open court, December 19th, 1843.

H. HARALSON, *Clerk*.
By J. THOMPSON, *Dep. Clerk*.

Filed 19th December, 1843.

H. HARALSON, *Clerk*.

In the Pulaski circuit court, November term, 1843.

In chancery, 26*th January*, 1844.

ROBINSON LYTLE and LYDIA LOUSIA LYTLE, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor, by his guardian, Wiley Clayton, complainants,

vs.

THE STATE OF ARKANSAS, William Russell, the Real Estate Bank of the State of Arkansas, and its trustees and assignees, Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, Charles P. Bertrand, John Wassell, John W. Cock, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, John Morrison and Edney, his wife, defendants. } 71.

Order for publication as to Russell.

Came the said complainants, by A. Fowler, their solicitor, and it appearing to the court that a subpœna had been issued against the said defendant, William Russell, and the sheriff to whom it was directed has returned that he cannot be found, and the court being satisfied that the process cannot be served on him, on motion of said complainants, by their said solicitors, it is by the court ordered, that the said William Russell be notified of the pendency of this suit, and that the nature of the complaint is, that the complainants, as heirs and representatives of Nathan Cloyes, deceased, are entitled to the possession of and estate in the northwest and northeast fractional quarters of section two, and the northwest and northeast fractional quarters of section one, in fractional township one north, and range twelve west, containing one hundred and eight acres and sixty-one hundredths of an acre of land, at and adjoining the city of Little Rock, by virtue of certain acts of Congress; which lands, after their right accrued and vested, were illegally and fraudulently patented to said Russell and other defendants, and are held by said defendants in fraud of said complainants' right; and prays that an absolute title in fee simple may be decreed to said complainants.

And it is further ordered and directed, that the said William Russell appear on the first day of the next term of this court, which term will be held on the last Monday of May next, (A. D. 1844,) at the courthouse in said county of Pulaski, or the said bill of complaint will be taken as confessed against him. And ordered, that this order be published in some newspaper printed in this State, for eight weeks successively, the last insertion to be at least four weeks before the commencement of said next term, as notice to the said William Russell.

May 28, 1844.

Motion, &c.

CLOYES' HEIRS
vs.
THE STATE OF ARKANSAS and others. } 71.

In chancery.

Came the defendant, John Percefull, by his solicitor, and on his motion it is ordered that he have leave to file his motion and affidavit to set aside the interlocutory decree in this case against him rendered at the last term of this court, which motion is filed accordingly.

Filing demurrer.

And came said defendant, William Russell, by his soliciter, and on his motion it is ordered, that he have leave to file his demurrer in this case, which is filed accordingly.

Motion.

In the Pulaski circuit court. At the May term, 1844.

THE STATE OF ARKANSAS et al., defts., adv. CLOYES' heirs, complainants. } In chancery.

And John Percefull, one of the defendants in the above entitled cause, as to the interlocutory decree rendered against him at the last term of this court in said cause, moves the court to set aside said decree, and allow him to demur or answer to said bill of complaint, which motion is based under the annexed affidavit.

ASHLEY & WATKINS, *Sol. for deft.*

Affidavit.

I, John Percefull, the above named defendant, do solemnly swear, that I have a just and equitable defence to said bill, and that the complaint of said complainants in this behalf is unjust and inequitable. And I am advised, and verily believe it to be true, that I have a good defence by way of demurrer to said bill, and that said bill is wholly insufficent in the law. I do further state, that I have but a small and inconsiderable interest in the land in controversy compared with some of the other numerous defendants in this case; that I am not acquainted with the course of chancery proceedings, and supposed that the defence of one defendant would settle the whole matter, as I understood the defendants all stand on the same footing, and that I was surprised by the suit, and the defence is to me troublesome and expensive, considering my means of paying; that for the two lots I own I hold the deed of the Governor Conway, under the seal of the State, and for my defence I have been counselled to investigate facts unknown to me personally, and I was not prepared to have defended this case at the last term of this court; that I heard of the interlocutory decree being taken against me before the court had adjourned at the last term, but the special judge, Tollison, had left immediately after the decree was entered up, and did not return as was expected; so that I had no opportunity of moving, at that term, to set the same aside, and for time to demur or answer; and that, in the present condition of the case, I am advised that no delay or prejudice can ensue to the complainants by permitting me to come in and defend. JOHN PERCIFULL.

Sworn to and subscribed in open court, this 28th day of May, 1844.
H. HARALSON, *Clerk*.
By J. A. HUTCHINGS, *Dep. clerk*.

Filed May 28, 1844.
H. HARALSON, *Clerk*.
By J. THOMPSON, *Dep. C.*

Demurrer of Russell.

To the Pulaski circuit court, sitting as a court of chancery. At the May term thereof, 1844.

The demurrer of William Russell, to the bill of complaint of Robinson Lytle and others.

The defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to said bill, and for causes of demurrer sheweth:

1st. The bill shows on its face, as the fact is, that the interest of this defendant in the lands therein mentioned consists entirely in the NE. fr'l qr. of sec. 2, and NW. and NE. fr'l qrs. of sec. No. 1, T. 1 N., R. 12 west; and in no other part of the lands mentioned in said bill.

2d. The bill and exhibits themselves prove that said Cloyes, in his lifetime, was not a settler upon or occupant of either the NE. fr'l qr. of said sec. No. 2, or of the NE. fra'l qrs. of sec. No. 1, T. 1 N., R. 12 west.

3d. The bill and exhibits themselves prove that no pre-emption right was ever granted to said Cloyes for or upon either the NE. fr'l qr. of said sec. No. 2, or the NW. or NE. fra'l qrs. of said sec. No. 1. But, on the contrary, that the pre-emption claim to each and all of these three fractional quarters was expressly rejected by the register and receiver, who alone were authorized by law to adjudicate and decide thereon.

4th. The receipt given and granted by the receiver of the land office at Little Rock, as exhibited with said bill (exhibit B,) was wholly unauthorized by and contrary to law, being entirely for lands which had never been sold to said Cloyes or to his heirs, by any register of a land office authorized to do so, and including three fractional quarter sections of land upon which no right of pre-emption had ever been granted, and upon which the claim to pre-emption had been expressly and distinctly rejected by the register and receiver, who alone were authorized by law to grant or to reject pre-emptions claims, or to decide thereon; wherefore said receipt is null and void in law and equity.

5th. The bill claims a pre-emption on the NW. and NE. fr. qr. of sec. 1, T. 1 N., R. 12 west, which are not adjoining fractions to the NW. fr. qr. of sec. 2, on which the improvements are alleged to [have] been made by said Cloyes.

Wherefore, and for divers other good causes of demurrer appearing

in said bill of complaint, this defendant doth demur to said bill, and to all the matters and things therein contained, and prays the judgment of this honorable court, whether he shall be compelled to make any further or other answer to said bill; and he humbly prays to be dismissed, with his reasonable costs in this behalf sustained.

TRAPNALL & COCK.

Filed, May 28, 1844. H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Motion.

June 13th, 1844.

CLOYES' HEIRS
vs.
THE STATE OF ARKANSAS and others. } 71.

Came the defendant, John Percefull, by his solicitor, and, on his motion, it is ordered that he have leave to file his motion to set aside the interlocutory decree against him in this case rendered; which motion is filed accordingly, and by the court taken under advisement.

"This motion cannot be found; supposed to be the motion referred to in a previous entry."

Interlocutory decree set aside.

June 14th, 1844.

CLOYES' HEIRS
vs.
THE STATE OF ARKANSAS and others. } 71.

Came said John Percefull, by his solicitor, and the court having sufficiently advised on said motion to set aside the interlocutory decree entered against him, it is by the court ordered, adjudged, and decreed, that, as to said Percefull, said interlocutory decree be set aside, and that said complainants recover, against John Percefull, all their costs as to said Percefull in this behalf expended. And it is ordered that said Percefull have leave to plead, answer, or demur.

Motion.

June 17th, 1844.

CLOYES' HEIRS
vs.
THE STATE and others. } 71.

Came said William W. Daniel, by his solicitor, and, on his motion, it is ordered that he have leave to file his motion to set aside the interlocutory decree in this case against him rendered, which motion is filed accordingly.

Orders.

On consideration whereof, it is by the court ordered, adjudged, and decreed, that, as to said William W. Daniel, said interlocutory decree be set aside.

And, on motion of said William W. Daniel, it is ordered that he have leave to file his demurrer in this case, which is filed accordingly.

And came said John Percefull, and, on his motion, it is ordered that he have leave to file his demurrer in this case, which is filed accordingly.

And came said complainants, by their solicitor, and, on their motion, it is ordered that they have leave to file the duly authenticated order of publication in this case, which is filed accordingly.

Motion.

WM. W. DANIEL et al.
adv.
CLOYES' HEIRS. } No. 71. In chancery.

The said defendant, Daniel, moves the court to set aside [the] interlocutory decree rendered against him at the last term in this case, which motion is based upon the annexed affidavit.

ASHLEY & WATKINS, *Sols. for Def't.*

Affidavit.

I, George C. Watkins, an attorney of this court, do state on oath, that, during the last term of this court, I was employed by John Morrison, as counsel for himself and the heirs of Wright Daniel, of whom the said William W. Daniel is one, as is also Edna, the wife of said John; that, by an arrangement with the solicitor of the complainants, time was extended to me to enter the appearance of the several defendants for whom I appeared. In enumerating them, I included the name of Morrison, but omitted that of Wm. W. Daniel. This [was] purely accidental on my part, and arose from my habit of considering Morrison as the guardian or principal person concerned, and because I had no idea of being held to such strictness by the solicitor of the complainants. I further state that I designed applying to set aside said decree at the last term; but his honor, the special judge, who left the same day or the next day after the decree was entered up, with the expectation of returning to close the unfinished business on his docket, was prevented from so returning, and it was not in my power to do more than give notice that I should apply to have the decree set aside. I further state, that, as I understand this case, said Wm. W. has a good defence, either by way of demurrer or answer, and that to make the decree final against him would be great injustice; and that, in the present attitude of this case, as it regards the other defendants, no delay or prejudice can ensue to complainants by allowing said Wm. W. to come in on the same footing with other defendants who have demurred.

GEO. WATKINS.

Sworn to and subscribed, in open court, this 16th day of June, 1844.

H. HARALSON, *Clerk.*
By J. THOMPSON, *D. C.*

Filed June 17, 1844.

H. HARALSON, *Clerk.*
By J. THOMPSON, *D. C.*

in said bill of complaint, this defendant doth demur to said bill, and to all the matters and things therein contained, and prays the judgment of this honorable court, whether he shall be compelled to make any further or other answer to said bill; and he humbly prays to be dismissed, with his reasonable costs in this behalf sustained.

TRAPNALL & COCK.

Filed, May 28, 1844. H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Motion.

June 13th, 1844.

CLOYES' HEIRS
vs.
THE STATE OF ARKANSAS and others. } 71.

Came the defendant, John Percefull, by his solicitor, and, on his motion, it is ordered that he have leave to file his motion to set aside the interlocutory decree against him in this case rendered; which motion is filed accordingly, and by the court taken under advisement.

"This motion cannot be found; supposed to be the motion referred to in a previous entry."

Interlocutory decree set aside.

June 14th, 1844.

CLOYES' HEIRS
vs.
THE STATE OF ARKANSAS and others. } 71.

Came said John Percefull, by his solicitor, and the court having sufficiently advised on said motion to set aside the interlocutory decree entered against him, it is by the court ordered, adjudged, and decreed, that, as to said Percefull, said interlocutory decree be set aside, and that said complainants recover, against John Percefull, all their costs as to said Percefull in this behalf expended. And it is ordered that said Percefull have leave to plead, answer, or demur.

Motion.

June 17th, 1844.

CLOYES' HEIRS
vs.
THE STATE and others. } 71.

Came said William W. Daniel, by his solicitor, and, on his motion, it is ordered that he have leave to file his motion to set aside the interlocutory decree in this case against him rendered, which motion is filed accordingly.

Orders.

On consideration whereof, it is by the court ordered, adjudged, and decreed, that, as to said William W. Daniel, said interlocutory decree be set aside.

And, on motion of said William W. Daniel, it is ordered that he have leave to file his demurrer in this case, which is filed accordingly.

And came said John Percefull, and, on his motion, it is ordered that he have leave to file his demurrer in this case, which is filed accordingly.

And came said complainants, by their solicitor, and, on their motion, it is ordered that they have leave to file the duly authenticated order of publication in this case, which is filed accordingly.

Motion.

WM. W. DANIEL et al. adv. CLOYES' HEIRS. } No. 71. In chancery.

The said defendant, Daniel, moves the court to set aside [the] interlocutory decree rendered against him at the last term in this case, which motion is based upon the annexed affidavit.

ASHLEY & WATKINS, *Sols. for Def't.*

Affidavit.

I, George C. Watkins, an attorney of this court, do state on oath, that, during the last term of this court, I was employed by John Morrison, as counsel for himself and the heirs of Wright Daniel, of whom the said William W. Daniel is one, as is also Edna, the wife of said John; that, by an arrangement with the solicitor of the complainants, time was extended to me to enter the appearance of the several defendants for whom I appeared. In enumerating them, I included the name of Morrison, but omitted that of Wm. W. Daniel. This [was] purely accidental on my part, and arose from my habit of considering Morrison as the guardian or principal person concerned, and because I had no idea of being held to such strictness by the solicitor of the complainants. I further state that I designed applying to set aside said decree at the last term; but his honor, the special judge, who left the same day or the next day after the decree was entered up, with the expectation of returning to close the unfinished business on his docket, was prevented from so returning, and it was not in my power to do more than give notice that I should apply to have the decree set aside. I further state, that, as I understand this case, said Wm. W. has a good defence, either by way of demurrer or answer, and that to make the decree final against him would be great injustice; and that, in the present attitude of this case, as it regards the other defendants, no delay or prejudice can ensue to complainants by allowing said Wm. W. to come in on the same footing with other defendants who have demurred.

GEO. WATKINS.

Sworn to and subscribed, in open court, this 16th day of June, 1844.

H. HARALSON, *Clerk.*
By J. THOMPSON, *D. C.*

Filed June 17, 1844.

H. HARALSON, *Clerk.*
By J. THOMPSON, *D. C.*

Demurrer of Daniel.

Pulaski circuit court, May term, 1844.

CLOYES' HEIRS, complainants,
vs.
THE STATE OF ARKANSAS and others, defendants.

The demurrer of William W. Daniel, one of the defendants to the bill of complaint filed against the State of Arkansas and others, defendants.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, doth demur in law to said bill, and for causes of demurrer sheweth:

1st. The proof of pre-emption, as set forth in the bill and exhibits, was not taken in presence of the register and receiver, agreeable to the rules prescribed by the Commissioner of the General Land Office.

2d. The bill shows on its face that said Cloyes, in his lifetime, was not the settler or occupant of the N. W. and N. E. frl. qrs. sec. 2, and the N W. and N. E. frl. qr. of sec. 1, town. 1 N., 12 west.

3d. The bill shows the entry to have been made and pre-emption claimed on the N. W. and N. E. fr. qr. of sec. 1, T. 1 N., R. 12 W., which are not adjoining fractions to the N. W. and N. E. frl. qr. of sec. 2, on which an improvement is alleged to have been made.

4th. The bill shows an entry on three fractions besides N. W. frl. qr. sec. 2, without showing that the improvement of said Cloyes extended on them; but, on the contrary, showing that the improvements were confined to said N. W. fr qr. 2; and that entry was, therefore, contrary to express law, and to the instructions of the General Land Office.

5th. The entry of land, as shown by the bill and certificate, was for four fractions, when by law only one could have been entered.

6th. The certificate granted was wholly unauthorized, and contrary to law, being for four fractions, when by law it could have issued for one only.

7. The receiver's certificate exceeds the grant of pre-emption, and is therefore void.

8. The pre-emption having been granted for the N. W. frl. qr. of sec. 2, T. 1 N., R. 12 W., and the privilege of entering adjoining fractions rejected, that grant was conclusive until reversed by the General Land Office, and no certificate could be granted for other, or more, or different lands.

9th. The receiver at Little Rock issued the certificate, as exhibit B in complainants' bill, wholly without authority and contrary to law, and the same is null and void.

10. Patents having issued, no subsequent act could have been done by the General Land Office, or the district land office, until such pat-

ents had been vacated by scire facias, or otherwise, at the suit of the United States. The title having passed from the United States, was wholly beyond the control of any department of the Government, except the judiciary.

11th. The bill shows on its face a patent to Gov. Pope for N. W. fr'l qr. of fr'l sec. 2, and to William Russell for the residue, by virtue of a different act of Congress, and the said claim of Cloyes, not by law extending to any portion patented to Russell, it does not appear under which claim the said parties defendants claim, or are alleged to claim, and therefore said parties could not be joined.

12th. The bill fails to show what lands are claimed by the complainants, whether north or south of the Arkansas river, or east or west of the *Qupaw* line, and the certificate for the same reason is void.

Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, this defendant doth demur to the said bill, and to all the matters and things therein contained, and prays the judgment of this hon. court, whether he shall be compelled to make any further or other answer to said bill; and he humbly prays to be hence dismissed, with his reasonable costs in this behalf sustained.

ASHLEY & WATKINS.

Filed June 17th, 1844.

H. HARALSON, *Clerk*,
By J. THOMPSON, *D. C.*

Demurrer of Percifull.

In the Pulaski circuit court, May term, 1844.

The separate demurrer of John Percifull, one of the defendants to the bill of complaint of Cloyes' heirs against the State of Arkansas and others, defendants.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true, in such manner and form as the same are therein and thereby set forth, doth demur in law to said bill, and for causes of demurrer sheweth:

1st. The proof of pre-emption, as set forth in the bill and exhibits, was not taken in the presence of the register and receiver, agreeable to the rules prescribed by the Commissioner of the General Land Office.

2d. The bill shows on its face that said Cloyes, in his lifetime, was not the settler or occupant of the N. W. and N. E. fr'l qrs. of sec. 2, and the N. W. and N. E. fr'l qrs. of sec. 1, town. 1 N., R. 12 west.

3d. The bill shows the entry to have been made, and pre-emption claimed, on the N. W. and N. E. fr'l qr. of sec. 1., T. 1 N., R. 12 W., which are not adjoining fractions to the N. W. fr'l qr. of sec. 2, on which an improvement is alleged to have been made.

4th. The bill shows an entry on three fractions besides N. W. fr'l qr. of sec. 2, without showing that the improvement of said Cloyes extended on them; but, on the contrary, showing that the improvements

Final decree.

And the complainants failing to amend their bill, it is by the court ordered, adjudged, and decreed, that said defendants, the State of Arkansas, William Russell, the Real Estate Bank of the State of Arkansas, the trustees of said Real Estate Bank aforesaid, Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, John Wassell, John W. Cock, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, John Morrison and Edney, his wife, go hence hereof without day, and recover against said Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, Nathan H. Cloyes, a minor under twenty-one years of age, and Wiley Clayton, his guardian, all their costs in this behalf expended.

Appeal and order.

Said complainants, by their solicitor, filed the affidavit of Absalom Fowler, their solicitor, for an appeal to the Supreme Court; on consideration whereof, it is ordered, that the appeal be granted.

In Pulaski circuit court, May term, A. D. 1844.

Affidavit.

ROBINSON LYTLE and Wife, Elias Hooper and Wife, and Nathan H. Cloyes, a minor under twenty-one years of age, by his guardian, Wiley Clayton, complainants,
vs.
THE STATE OF ARKANSAS, William Russell, the Real Estate Bank of the State of Arkansas, the trustees of said Real Estate Bank, Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, John Wassell, John W. Cock, Fredrick W. Trapnall, George C. Watkins, Sam'l H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, John Morrison and Edney, his wife, defendants. } In chancery.

And the said complainants come and make their appeal to the Supreme Court, and Absalom Fowler, the solicitor and agent of and for said complainants, being first duly sworn, states that such appeal is not made for vexation or delay, but because the affiant verily believes that the appellants are aggrieved by the decision and decree of the court.

A. FOWLER.

Sworn to and subscribed in open court, July 3d, 1844.
H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Filed, July 3d, 1844. H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Certificate.

STATE OF ARKANSAS, *County of Pulaski, ss:*

I, Gordon N. Play, clerk of the circuit court in and for the county of Pulaski aforesaid, do hereby certify that the foregoing 58 half sheets, and this half sheet, contains a full and complete transcript of the record and proceedings in the case therein mentioned, as the same remains in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, at Little Rock, the 9th day of December, [L. S.] A. D. 1844. GORDON N. PLAY, *Clerk*.
By J. A. HUTCHINGS, *D. clerk*.

Appearance.

And afterwards, to wit, at a supreme court of the State of Arkansas, begun and held at the court-house in the city of Little Rock, on the 13th day of January, A. D. 1845, on the 15th day of January came the said appellants, by Absalom Fowler, their solicitor, and the said appellees, by George C. Watkins, attorney general of said State, Messrs. Pike and Baldwin, Trapnall and Cocke, Hempstead and Johnson, and Watkins and Curran, their solicitors, and on the 15th day of January were the following proceedings, to wit:

Filing assignment.

At this day come the said appellants, by their solicitor, and it is ordered, that they have leave to file their assignment of errors, and thereupon it is filed.

Suggestion of death, &c.

And at the same time come the said appellees, surviving, by their solicitors, and suggest to the court here, that since the decree of said circuit court in this cause, two of the said appellees, to wit, James Pitcher and Thomas S. Reynolds, have departed this life, and that a judgment of ouster has been rendered by this court against the Real Estate Bank of the State of Arkansas, one other of said appellees; all which is by said appellants by their solicitor admitted to be true. It is therefore ordered that this cause progress in the name of and against said surviving appellees.

Filing joinder.

And thereupon said surviving appellees, by their solicitors, file their joinder to the appellants' assignment of errors. The said assignment of errors, so filed by the appellants, is in the following words:

Final decree.

And the complainants failing to amend their bill, it is by the court ordered, adjudged, and decreed, that said defendants, the State of Arkansas, William Russell, the Real Estate Bank of the State of Arkansas, the trustees of said Real Estate Bank aforesaid, Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, John Wassell, John W. Cock, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, John Morrison and Edney, his wife, go hence hereof without day, and recover against said Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, Nathan H. Cloyes, a minor under twenty-one years of age, and Wiley Clayton, his guardian, all their costs in this behalf expended.

Appeal and order.

Said complainants, by their solicitor, filed the affidavit of Absalom Fowler, their solicitor, for an appeal to the Supreme Court; on consideration whereof, it is ordered, that the appeal be granted.

In Pulaski circuit court, May term, A. D. 1844.

Affidavit.

ROBINSON LYTLE and Wife, Elias Hooper and Wife, and Nathan H. Cloyes, a minor under twenty-one years of age, by his guardian, Wiley Clayton, complainants,
vs.
THE STATE OF ARKANSAS, William Russell, the Real Estate Bank of the State of Arkansas, the trustees of said Real Estate Bank, Richard C. Byrd, James Pitcher, William P. Officer, Ebenezer Walters, John Wassell, John W. Cock, Fredrick W. Trapnall, George C. Watkins, Sam'l H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, Thomas S. Reynolds, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, John Morrison and Edney, his wife, defendants. } In chancery.

And the said complainants come and make their appeal to the Supreme Court, and Absalom Fowler, the solicitor and agent of and for said complainants, being first duly sworn, states that such appeal is not made for vexation or delay, but because the affiant verily believes that the appellants are aggrieved by the decision and decree of the court.

A. FOWLER.

Sworn to and subscribed in open court, July 3d, 1844.
H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Filed, July 3d, 1844. H. HARALSON, *Clerk*.
By J. THOMPSON, *D. C.*

Certificate.

STATE OF ARKANSAS, *County of Pulaski, ss:*

I, Gordon N. Play, clerk of the circuit court in and for the county of Pulaski aforesaid, do hereby certify that the foregoing 58 half sheets, and this half sheet, contains a full and complete transcript of the record and proceedings in the case therein mentioned, as the same remains in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, at Little Rock, the 9th day of December, [L. S.] A. D. 1844. GORDON N. PLAY, *Clerk*.
By J. A. HUTCHINGS, *D. clerk*.

Appearance.

And afterwards, to wit, at a supreme court of the State of Arkansas, begun and held at the court-house in the city of Little Rock, on the 13th day of January, A. D. 1845, on the 15th day of January came the said appellants, by Absalom Fowler, their solicitor, and the said appellees, by George C. Watkins, attorney general of said State, Messrs. Pike and Baldwin, Trapnall and Cocke, Hempstead and Johnson, and Watkins and Curran, their solicitors, and on the 15th day of January were the following proceedings, to wit:

Filing assignment.

At this day come the said appellants, by their solicitor, and it is ordered, that they have leave to file their assignment of errors, and thereupon it is filed.

Suggestion of death, &c.

And at the same time come the said appellees, surviving, by their solicitors, and suggest to the court here, that since the decree of said circuit court in this cause, two of the said appellees, to wit, James Pitcher and Thomas S. Reynolds, have departed this life, and that a judgment of ouster has been rendered by this court against the Real Estate Bank of the State of Arkansas, one other of said appellees; all which is by said appellants by their solicitor admitted to be true. It is therefore ordered that this cause progress in the name of and against said surviving appellees.

Filing joinder.

And thereupon said surviving appellees, by their solicitors, file their joinder to the appellants' assignment of errors. The said assignment of errors, so filed by the appellants, is in the following words:

Assignment of errors.

And the said appellants, by their solicitor, come and say, that in the record and proceedings aforesaid, and also in rendering the decree aforesaid, there is manifest error, in this, to wit, that the said circuit court in chancery sitting, sustained the demurrer of the said appellees, who filed their demurrers to the said bill, whereas the said demurrers ought to have been overruled. There is also error in this, to wit, that the said circuit court in chancery sitting adjudged and decreed that the said appellees should go hence thereof without day, and recover against the said appellants all their costs in that behalf expended. There is also error in this, to wit, that the said circuit court in chancery sitting adjudged and decreed costs personally against the said minor, Nathan H. Cloyes. And also there is error in this, to wit, that, by the record aforesaid, it appears that the decree aforesaid, in form aforesaid given, was given for the said appellees against the said appellants, whereas, by the law of the land, it ought to have been given for the said appellants against the said appellees. And the said appellants pray that the decree aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing; and that they may be restored to all things which they have lost by occasion of the said decree, &c. A. FOWLER,

Solicitor for the appellants.

Joinder in error.

And the joinder in error, so filed by the said appellees, is in the following words. And the said appellees, by their respective solicitors, Pike and Baldwin, Trapnall and Cocke, Hempstead and Johnson, and Watkins and Curran, and Watkins, attorney general, come and say, that there is no error in the record and proceedings aforesaid sent here, or the rendering the decree aforesaid, in manner and form, &c.; and they pray the court here to examine as well the record and proceedings aforesaid, as also the matters by the said appellants above thereof assigned for error, and that the decree aforesaid may be in all things affirmed.

WATKINS, *Attorney general.*
PIKE & BALDWIN,
TRAPNALL & COCKE,
HEMPSTEAD & JOHNSON,
WATKINS & CURRAN,

Solicitors for Appellees.

And afterwards, to wit, on Thursday, January 30, A. D. 1845, were the following proceedings, to wit:

Submission.

At this day come the said appellants and appellees, by their solicitors, and this cause is submitted, and by the court taken under advisement.

And afterwards, to wit, on the seventeenth day of February, in the year of our Lord eighteen hundred and forty-seven, at a court begun and held at the court-house, in the city of Little Rock, on the fifth day of January, in the year eighteen hundred and forty-seven, to which day

this cause has been regularly continued by operation of law, were the following proceedings, to wit:

Suggestion of death, &c.

At this day come the said appellants, by their solicitor, and suggests to the court that, since the decree of said circuit court in chancery in this cause, and the appeal taken, the said Lorenzo N. Clarke and Robert S. Gibson, trustees of the Real Estate Bank of the State of Arkansas, and appellees in this cause, have departed this life; which, by said appellees surviving, is not denied. It is therefore ordered that this cause progress against said surviving appellees.

And afterwards, to wit, on the twenty-third day of February, in the year eighteen hundred and forty-seven, were the following proceedings, to wit:

Continuance.

This cause being argued and submitted, and the court not being sufficiently advised thereof, it is ordered that this cause be and it is hereby continued until the next term of this court.

And afterwards, to wit, at a supreme court of the State of Arkansas, begun and held at the court-house in the city of Little Rock, on the first Monday, being the 5th day of July, in the year of our Lord eighteen hundred and forty-seven, to which day this cause was continued by order of court, came the said appellants and appellees, by their solicitors aforesaid; and, on the eighth day of said July, were the following proceedings, to wit:

Affirmance.

This cause came on to be heard upon the transcript of the record of the circuit court of Pulaski county, in chancery sitting, and was argued in this court by the solicitors of the parties; on consideration whereof, all the matters therein being seen and well understood, it is the opinion of this court that there is no error in the proceedings and decree of said circuit court, in chancery sitting, in this cause.

It is therefore ordered, adjudged, and decreed by this court, that the decree of said circuit court, in chancery sitting, in this cause, be and the same is hereby in all things affirmed, with costs. It is further ordered and decreed, that said appellants pay to said appellees all their costs on the appeal in this cause in this court expended, and that said appellees have execution thereof against them, as upon judgments at law.

And afterwards, to wit, on Wednesday, July 28th, A. D. 1847, were the following proceedings, to wit:

Filing affidavit.

At this day come the said appellants, by their solicitor, and it is ordered that they have leave to file the affidavit of Absalom Fowler, their attorney and agent, as to the value of the property in controversy in this cause; and thereupon said affidavit is filed.

Which said affidavit is as follows, to wit:

Affidavit.

Absalom Fowler, the attorney and agent for the complainants, who are also the appellants in the above entitled cause, being first duly sworn, states, that he is personally well acquainted with the property in controversy in said cause, and with its value; and that he knows the same to be of the value of more than ten thousand dollars of lawful money.

A. FOWLER.

Sworn to in open court, this 28th day of July, A. D. 1847.
Test: L. E. BARBER, *Clerk*.

And afterwards, to wit, on the thirtieth day of July, in the year last aforesaid, the said appellants, by their said solicitor, presenting to the clerk of said supreme court a writ of error directed to said court, and allowed by the hon. Thomas Johnson, chief justice thereof, issued by William Field, clerk of the circuit court of the United States, for the district of Arkansas, and bearing teste and date the twenty-ninth day of July, in the year eighteen hundred and forty-seven, commanding said court to send the record and proceedings in this cause, with all things concerning the same, to the Supreme Court of the United States, filed their bond to prosecute said writ of error with effect. Which said bond is in the following words, together with the endorsement of approval thereof, that is to say:

Appeal bond, &c.

Know all men by these presents, that I, Absalom Fowler, of the city of Little Rock, in the State of Arkansas, am held and firmly bound unto the State of Arkansas, William Russell, and Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, junior, Anthony H. Davies, Sanford C. Faulkner, Silas Craig, George Hill, Enoch J. Smith, James H. Walker, and John Drennen, as surviving trustees and assignees of the Real Estate Bank of the State of Arkansas, and Richard C. Byrd, William P. Officer, Ebenezer Walters, John Wassell, John W. Cocke, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, and John Morrison and Edney Morrison, his wife, in the full and just sum of two hundred dollars, to be paid to the said above named payees and obligees, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents. Sealed with my seal and dated this twenty-ninth day of July, in the year of our Lord one thousand eight hundred and forty-seven. Conditioned, that whereas lately, in the supreme court of the State of Arkansas, in the July term thereof, in the year last aforesaid, in a suit in equity depending on appeal in said supreme court, between Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor, by his

guardian, Wiley Clayton, complainants and appellants, and the above named payees and obligees, defendants and appellees, a final decree was rendered against the said complainants and appellants. And the said complainants and appellants having obtained a writ of error, and filed the same in the office of the clerk of the said supreme court, with the view of reversing the said decree so rendered in the said suit, and obtained a citation, directed to the said defendants and appellees, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, to shew cause, if any there be, why said decree, so rendered against the said complainants and appellants, should not be corrected, and speedy justice done the said parties in that behalf.

Now, if the said plaintiffs in error shall prosecute their said writ of error to effect, and answer all damages and costs if they fail to make their plea or cause good, then the above obligation to be void, else to remain in full force and virtue.

A. FOWLER. [SEAL.]

The annexed and foregoing bond is approved by—

THOMAS JOHNSON,

Chief justice of the supreme court of Arkansas.

Filing copy of writ.

And the said appellants filed in the office of the clerk of said supreme court a copy of said writ of error, with the allowance thereof, as aforesaid; the tenor of which said writ is as follows, to wit:

THE UNITED STATES OF AMERICA,

District of Arkansas, ss:

The President of the United States, to the honorable the supreme court [SEAL.] of the State of Arkansas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment and decree, in a certain cause in equity, which is in the said supreme court, before you, the judges thereof, between Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, a minor, by his guardian and next friend, Wiley Clayton, complainants and appellants, and The State of Arkansas, William Russel, and Sam. C. Roane, Ebenezer Walters, Lambert Reardon, Henry L. Biscoe, William F. Moore, John Preston, junior, Anthony H. Davies, Sanford C. Faulkner, Silas Craig, George Hill, Enock J. Smith, James H. Walker, and John Drennen, as surviving trustees and assignees of the Real Estate Bank of the State of Arkansas, and Richard C. Byrd, William P. Officer, Ebenezer Walters, John Wassell, John W. Cocke, Frederick W. Trapnall, George C. Watkins, Samuel H. Hempstead, John Robins, John Percefull, James S. Conway, Henry F. Pendleton, Jacob Mitchell, John H. Leech, William E. Woodruff, Chester Ashley, William J. Byrd, William W. Daniel, and John Morrison and Edny Morrison, his wife, defendants and appellees, a manifest error has happened, to the great damage of

the said Robinson Lytle and Lydia Louisa Lytle, his wife, Elias Hooper and Mary E. Hooper, his wife, and Nathan H. Cloyes, who sues by his guardian, Wiley Clayton, complainants and appellants as aforesaid, as by their complaint it appears. And it being proper that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, we do command you, if judgment and decree be therein given, that then, under the seal of said supreme court, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court of the United States, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein, to correct that error, what of right and according to the laws of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this twenty-ninth day of July, in the year of our Lord one thousand eight hundred and forty-seven.

In witness whereof I, William Field, clerk of the circuit court of the United States for the district of Arkansas, have hereunto set my hand as such, and affixed the seal of said circuit court, at office, in Little Rock, in said district, the day and year last aforesaid.

WM. FIELD, *Clerk.*
By A. H. RUTHERFORD,
Deputy clerk.

Allowed by THOMAS JOHNSON,
Chief justice of the supreme court of the State of Arkansas.

In pursuance of which said writ, and the allowance thereof, a record of the judgment and decree aforesaid, with all things thereunto relating, together with said writ of error attached, is hereby transmitted to the Supreme Court of the United States accordingly.

STATE OF ARKANSAS,
In the supreme court, sct:

In testimony that the foregoing one hundred and four pages contain a full, true, and complete transcript of the record and proceedings of said supreme court, in the case in the caption thereof stated, except the opinion of said supreme court therein delivered, and the briefs of counsel therein filed, I, Luke E. Barber, clerk of said supreme court, have hereto set my hand, and affixed the seal of said supreme court, at my office, in the city of Little Rock, this 21st day of August, in the year of our Lord eighteen hundred and forty-seven.

[SEAL.] L. E. BARBER,
Clerk supreme court.

Filed 23d October, 1847.